92-03025/

COMMITTEE ON INSTITUTIONS

REVIEW OF THE TERM OF OFFICE, OBJECTIVES, ACTIVITIES AND MANAGEMENT OF THE PUBLIC PROTECTOR

Final report

November 1991

ISBN-2-550-22783-2

LEGAL DEPOSIT, 1st QUARTER 1992

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS ii

MEMBERS OF THE COMMITTEE v

COMMITTEE PERSONNEL vii

ACKNOWLEDGEMENTS ix

INTRODUCTION 1

0.1 Mandate of the parliamentary committee 1

0.2 Procedures of the parliamentary committee 1

0.3 Presentation of the institution of Public Protector 3

1. THE STATUS AND INDEPENDENCE OF THE PUBLIC PROTECTOR 4

1.1 Appointment of the ombudsman 4
1.2 Budget allocation 5
1.3 Role of the assistant 7

2. ACCESS TO THE PUBLIC PROTECTOR 10

2.1 Difficulty of access and insufficient information 10
2.2 Appellation 13
2.3 Use of the title 13

3. THE EFFECTIVENESS OF THE PUBLIC PROTECTOR 14

3.1 The power of recommendation 14
3.2 Contribution of a parliamentary committee 16
3.3 Annual Report 19
3.4 Intervention in equity 21
3.5 Prevention and the systemic approach 22
3.6 Resorting to the media 23
3.7 Interruption of prescription 24

4. **JURISDICTION OF THE PUBLIC PROTECTOR** 28

4.1 Government agencies not governed by the Public Protector Act 28
4.2 The health and social services network 32
4.3 The education network 36
4.4 The municipality network 40
4.5 Labour relations 42
4.6 Administrative tribunals 42
4.7 Private businesses with government contracts 44

5. **OTHER ISSUES** 46

5.1 Transfer and promotion rights of staff of the Public Protector's office within the public service 46
5.2 Report on Activities 47

ADDENDUM 48

RECOMMENDATIONS 50

APPENDICES 62

1 List of individuals and organizations consulted.

2 List of briefs submitted to the Committee.

3 Extract from the 1989-1990 annual report of the Public Protector, Daniel Jacoby. English Summary, Table 4, p. 21.

4 Extract from the 1989-1990 annual report of the Public Protector, Daniel Jacoby. English Summary, Table 7, p. 24-25.

5 Extract from the 1980 annual report of the Public Protector, Luce Patenaude, Table 4-C, p. 265-267. (free translation) Report is available in French only.

MEMBERS OF THE COMMITTEE

MEMBERS OF THE COMMITTEE

Mr. Claude Dauphin, member for Marquette, Chairman
Mr. Rémy Trudel, member for Rouyn-Noranda-Témiscamingue, Vice-chairman

Mr. Robert Benoit, member for Orford
Mr. François Beaulne, member for Bertrand
Ms. Jocelyne Caron, member for Terrebonne
Mr. Christian Claveau, member for Ungava
Mr. Benoît Fradet, member for Vimont
Mr. Réal Gauvin, member for Montmagny-L'Islet
Mr. André J. Hamel, member for Sherbrooke
Ms. Louise Harel, member for Hochelaga-Maisonneuve
Mr. Richard Holden, member for Westmount
Mr. John Kehoe, member for Chapleau
Mr. Yvon Lafrance, member for Iberville
Mr. Robert LeSage, member for Hull
Mr. Cosmo Maciocia, member for Viger

The following Members were Committee members between November 29, 1989 and October 23, 1991

Mr. Jean Audet, member for Beauce-Nord
Mr. Jean-Pierre Bélisle, member for Mille-Îles
Mr. Yves Blais, member for Masson
Mr. Jacques Brassard, member for Lac-Saint-Jean
Mr. Albert Houde, member for Berthier
Mr. René Serge Larouche, member for Anjou
Mr. Charles Messier, member for Saint-Hyacinthe
Mr. Robert Thérien, member for Rousseau
Mr. Russell Williams, member for Nelligan

COMMITTEE PERSONNEL

COMMITTEE PERSONNEL

Secretariat:

Ms. Lucie Giguère, clerk
Ms. Adrienne Beauregard, support staff
Ms. Manon Perron, support staff
Ms. Pierrette Joncas, office staff
Ms. Madeleine Lavoie, support staff
Ms. Sylvie St-Hilaire, support staff

Research:

Ms. Nicole Trudeau-Bérard, consultant
Ms. Suzanne Langevin, researcher
Mr. Jules Viviers, researcher

ACKNOWLEDGEMENTS

ACKNOWLEDGEMENTS

The Committee on Institutions gratefully acknowledges the assistance of all who contributed to the realisation of our mandate.

We particularly wish to recognize the individuals and groups who participated in the deliberations. Their input, whether through the submission of a brief or their appearance at the public hearings, was essential to our considerations and a determining factor in the final recommendations.

We are deeply appreciative of the outstanding contribution of the Public Protector, Mr. Daniel Jacoby, through his responses to our questions, and of the valuable cooperation of his staff throughout the deliberations.

Our research group provided judicious advice and conscientious analyses and was an indispensable source of clarification. The competent support of our office staff is also worthy of note.

Finally, we wish to thank the Ministère des Transports and the research section of the Library of the National Assembly for their loan of personnel services.

INTRODUCTION

0.1 Mandate of the parliamentary committee

In accordance with section 294 of the Standing Orders of the National Assembly and a resolution adopted by the National Assembly, the Committee on Institutions has examined the term of office, objectives, activities and management of the Public Protector.

Under section 294, each parliamentary committee must annually examine the objectives, activities and management of at least one public body that is subject to its powers of supervision.

As the Public Protector comes under its authority, the Committee on the National Assembly must give an annual hearing to the institution, pursuant to paragraph 4 of section 116 of its Standing Orders. However, on January 18, 1990, the Committee on the National Assembly agreed to delegate this responsibility to the Committee on Institutions, which had heard the Public Protector the previous year during its examination of his annual report. The decision by the Committee on the National Assembly was ratified by the National Assembly on March 15, 1990.

At his first meeting with the members of the Committee on Institutions on March 2, 1989, the Public Protector, Mr. Daniel Jacoby, explained some of the difficulties he faces in carrying out his mandate. This led to certain recommendations by the Committee. The Committee subsequently determined that the questions raised during this first meeting called for more thorough study and decided to undertake this initiative.

This is the first in-depth examination of the term of office, objectives, activities and management of the institution of Public Protector in its more than twenty years of existence.

0.2 Procedures of the parliamentary committee

At the outset, the Committee engaged the services of a consultant, Ms. Nicole Trudeau-Bédard, as well as a researcher from the National Assembly Library, Ms. Suzanne Langevin. From January to June 1991, Mr. Jules Viviers, who had taken part in the proceedings of the Committee on the Budget and Administration on the reform of the Public Service Act, joined the research team on loan from the Ministère des Transports.

Within the scope of their mandate, the Committee held several working sessions in addition to meetings of the steering

committee, comprised of the Committee chairman, vice-chairman and clerk.

As an initial step, the Committee received the Public Protector at a public hearing on April 12, 1990, for the purpose of hearing the objectives, activities and management of the institution and the problems encountered in the exercise of his mandate. It then produced a hearings document in which it invited all individuals and organizations interested in the institution to submit their comments on the various questions presented to them and on any other matter not dealt with in the document. It was also agreed that the Committee would hold public and private hearings. A notice of public hearings was published in the official gazette and other newspapers on September 12, 1990. In addition, invitations, together with a copy of the discussion paper, were sent to a number of organizations .

In response to the public notice and individual invitations, the Committee received 64 briefs, of which 25 were for tabling only, and heard 39 individuals or organizations during five days of public hearings held in January of 1991. The hearings allowed the Committee the opportunity to observe the high level of interest of these individuals and organizations in the institution of Public Protector. The quality of the presentations greatly assisted their considerations.

The hearings raised a series of questions which the Committee addressed to the Public Protector during a further public hearing held on May 28, 1991. The Committee wishes to emphasize the high quality of the participation of the Public Protector during this and previous appearances. Assisted by his staff, he was able to clarify numerous points of the examination.

As was indicated in the hearings document, the Committee reviewed several areas in addition to the question of extending the jurisdiction of the Public Protector, their focal point from the outset. These include matters relating to the status and independence of the Public Protector, access to his services, his effectiveness, and other questions concerning possible legislative amendments. Each topic is dealt with in a separate section in which the Committee provides an account of the various viewpoints expressed before presenting its analysis and conclusions.

0.3 Presentation of the institution of Public Protector

The Public Protector Act was approved and brought into force on November 14, 1968 and became operational in May of 1969. Though designated by a different name, the institution of Public Protector was inspired by other ombudsman models in existence throughout the world and, principally, by that of New Zealand.

The first ombudsman was appointed in 1713 by King Charles XII to supervise tax collectors, judges, and other public officers acting in the name of the King. In 1809, Sweden adopted a new constitution which, in addition to limiting royal power, called for the creation of another position of ombudsman. The origins of the institution, however, date back much earlier to the first structured governments. During the Roman Empire and under the Han dynasty in China, it was the census-takers who gathered complaints against the administration. Today, numerous countries entrust an ombudsman with the task of examining their governments' actions.

At present, all Canadian provinces have an ombudsman with the exception of Newfoundland, which abolished the position in 1990, and Prince Edward Island. There is no ombudsman at the federal level, but positions such as the Privacy Commissioner and the Official Languages Commissioner play a similar role in their specific fields of intervention.

The institution of Public Protector was created to provide added protection for the individual, increasingly isolated and vulnerable in the face of a significant growth in government services. The person in this position supervises any omissions or wrongdoings that might be committed by the Administration.

As an officer of the National Assembly, the Public Protector participates in the control of the executive branch by the legislative branch. He is a solution to what some authors, quoted by the Supreme Court, have called "one of the dilemmas of our times":

> "In the Modern state... democratic action is possible only through the instrumentality of bureaucratic organization; yet bureaucratic power -- if it is not properly controlled -- is itself destructive of democracy and its values [1]".

---

1 R. Gregory and P. Hutchesson, The Parliamentary Ombudsman (1975), p. 15.

1. THE STATUS AND INDEPENDENCE OF THE PUBLIC PROTECTOR

By taking up matters related to the status of the Public Protector, we touch on the very essence of the institution of ombudsman or Public Protector. As defined by the Supreme Court, "The position of ombudsman (a word borrowed from the Swedish meaning "Procurator for civil affairs" but loosely translated as "public protector") is typically provided for by a legislative body and headed by an independent public official with the power to receive complaints about, inquire into and report on governmental abuses affecting members of the public [2]."

Independence is thus one of the principal characteristics required for an ombudsman to be recognized as such. It is also one of the elements essential to the smooth operation of the institution, since this quality is linked to the credibility of the ombudsman. However, as important as the institution's independence is the appearance of its independence. Indeed, in order to adequately protect citizens, the Public Protector must first have their trust. For this reason, the Committee on Institutions gave priority in its hearings to questions related to the independence of the Public Protector.

1.1 Appointment of the ombudsman

According to the constituting Act, the Public Protector is appointed by the National Assembly, on a motion by the Prime Minister, with the approval of two-thirds of its Members, and can be dismissed only through the same procedure. Quebec law differs on this point from other provinces, where the ombudsman is appointed by the Government on the recommendation of the Legislative Assembly.

The majority of presenting individuals and organizations believed that the current method of appointment ensured the independence and credibility of the Public Protector. However, some organizations felt a two-thirds majority of the Members of the National Assembly was insufficient and recommended instead that approval by three-quarters of the Members be required.

After discussion, the members of the Committee on Institutions rejected this recommendation as unnecessary in view of the fact that all four individuals who have held the position of Public Protector were appointed unanimously by the National Assembly. On the other hand, the Committee feels there is merit

---

2 [1984] S.C.R. 447, p. 450.

in a recommendation that would entitle rights defence organizations to submit nominations for the position to the Prime Minister. The Committee is thus voicing its wish that the Prime Minister accord special attention to the suggestions of these organizations when he selects the person to be proposed to the National Assembly for the position of Public Protector.

1.2 Budget allocation

In his previous appearances before the members of the Committee on Institutions, the Public Protector drew attention to a situation with the potential to tarnish the independence of the institution. Although he is attached to the National Assembly, the Public Protector must submit his staff and budget requests to the Conseil du trésor, the body which allocates resources to the various departments and bodies under his supervision. In his opinion, this places the Conseil du trésor in a position of conflict of interest. In 1989, already cognizant of the matter, the Committee asked the Government to reassess the situation.

The Committee on Institutions decided to bring this situation to the attention of the public within the framework of the hearings on the term of office, objectives, activities and management of the Public Protector.

The responding organizations and individuals unanimously concluded that there did seem to be a conflict of interest. In fact, the problem of the dependency of the Public Protector on the Conseil du trésor had already surfaced in the 1982-1983 annual report. The Public Protector at that time, Mr. Yves Labonté, noted:

> "In addition, the National Assembly has practically no control over the financial resources allocated to the Protector to execute his mandate. It is true that the National Assembly allocates the annual supplies; however, it is common knowledge that this vote is merely an official sanction of the Treasury Board's book of supplies. This has no consequence when it concerns a department or body responsible to the Executive, but it is a totally unacceptable trespass of the Executive in a field pertaining to the legislative power. The division of powers being the

foundation of our political system, such infringements are intolerable [3]."

As a solution, Mr. Labonté proposed that the Public Protector make his financial requests to a parliamentary committee, which would be the only authority to decide on their approval or refusal.

The Committee on Institutions agrees that, according to the principle of separation of powers, bodies under the authority of the legislative branch should at no time be subject to the control of the executive branch. In fact, of the three institutions identified as directly under the authority of the National Assembly, only the Public Protector is required to submit his budget and staff estimates to the Conseil du trésor. The Auditor General, previously in the same situation, had his constituting Act amended in 1985 and now submits his budgetary estimates to the Office of the National Assembly [4]. The Director General of Elections presents his budgetary estimates to the National Assembly which refers them to a parliamentary committee for consideration. He must also furnish the committee with a preliminary financial report for the preceding fiscal year [5].

The last model was noted with interest by the Committee. In its view, it would be expedient for the Public Protector to present his budgetary estimates to the National Assembly and for consideration of the budget to be referred to a parliamentary committee. The latter responsibility could be given to the Committee on Institutions which, since 1990, has been specially mandated by the National Assembly to hear the Public Protector's annual report. In order to enable the Committee to assume this new mandate, the Public Protector should be required, by legislation, to submit a preliminary financial report for the preceding fiscal year to the Committee. This function would be assumed by the Committee on Institutions within the framework of a general mandate regarding the Public Protector, as proposed in section 3.

---

3 Le Protecteur du citoyen, Rapport annuel 1982-1983. English Summary p. 9.

4 Auditor General Act, R.S.Q., c. V-5.01, section 63.

5 Election Act, R.S.Q., c. E-3.3, sections 543 and 544.

Recommendation 1

The Committee recommends:

That the Public Protector submit his annual budgetary estimates to the National Assembly;

That the National Assembly refer consideration and approval of the budgetary estimates of the Public Protector to the Committee on Institutions;

That the Committee on Institutions, after consideration and amendments if necessary, approve these budgetary estimates and report to the National Assembly;

That the Standing Orders of the National Assembly be amended in consequence, in particular section 17 of the operating rules of the National Assembly concerning the examination of financial commitments.

1.3 Role of the assistant

Under section 4 of the Public Protector Act, the Government may appoint an assistant to the Public Protector upon the recommendation of the latter. Like the Public Protector, the assistant's term of office is five years.

The Public Protector submits that, in the structures and vocabulary of the Public Administration, the word "assistant" is confusing and should be replaced by the term "Deputy Public Protector", which would correspond more closely to the legal reality of the position. He asks that the Act provide for the possibility that several Deputy Public Protectors be appointed by the National Assembly rather than by the Government.

In the hearings document, the following question was submitted to the organizations and individuals invited to participate: "Since recourse to the Public Protector is perceived as a personalized recourse, is it desirable to appoint several Deputy Public Protectors?"

The hearings participants generally favoured replacing the term "assistant to the Public Protector" by "Deputy Public Protector". However, opinion was divided regarding the appointment of several Deputy Public Protectors by the National Assembly. The Chambre des notaires is of the opinion that the moral authority of the ombudsman is indivisible and must remain centralized in one and the same person. It is concerned that increasing the number of positions will trivialize and depersonalize the institution and produce a bureaucracy.

Other individuals and organizations linked the question of appointing several Deputy Public Protectors directly to that of broadening the jurisdiction of the Public Protector; some envision the appointment of Deputy Public Protectors according to sectors of specialization (health and social services, education, etc.) or regions.

A proposal by the Conseil des Atikamekw et des Montagnais to reserve a position for a native Deputy Public Protector was of particular interest to Committee members. The Conseil recommended that the person selected should have "a good knowledge of native rights, languages and cultures in order to assist the Public Protector in his function of ensuring that the obligation of the Government of Quebec as trustee for the native peoples is implemented by the Public Administration, civil servants and Québec state-owned corporations".

Aware that the Public Protector had already demonstrated interest in the defence of the rights of native peoples, the Committee asked his opinion of appointing a Deputy Public Protector for Native Affairs. While he had no objection in principle, the Public Protector pointed out that in view of the province's limited jurisdiction in native affairs, the pertinence of such a general mandate would remain to be proven in comparison with other clientele.

The Committee agrees that the term "Deputy Public Protector" would conform more accurately to the real importance of the office of assistant to the Public Protector and to its role. It believes that the Act should allow the appointment of no more than three Deputy Public Protectors. It also recognizes that the Public Protector must be consulted before any Deputy Public Protector is appointed in order to respect the independence and personalized character of the institution, the decisions of which are identified in a single person.

In addition, the Committee believes that the Public Protector is best placed for assessing the appropriateness of appointing each Deputy Public Protector to a specific sector of activity or region. Thus, it did not judge it advisable to rule on this question or on the proposal to designate a Deputy Public Protector for Native Affairs before the Public Protector has identified the areas of specialization to which he would like to see Deputy Public Protectors appointed.

With reference to the personalized nature of the institution, the Committee is of the opinion that the Deputy Public Protectors should be appointed, not by the National Assembly, but by the Government upon the recommendation of the Public Protector.

At present, no power is devolved upon the assistant by law except those powers that can be delegated to him by the Public Protector under the second paragraph of section 12 of the Public Protector Act. However, the Act does not allow the assistant to delegate his powers to another person, give notice of a breach or make a formal recommendation. It is the opinion of the Committee that the Public Protector should be able to delegate the powers listed in sections 26.1 and 26.2 of the Act to one or more Deputy Public Protectors in view of the importance that must be recognized in this office. Such a measure could serve to increase the efficiency of the institution, since the Deputy Public Protector would be able to intervene initially with the upper management of public bodies and the Public Protector would intervene personally only when necessary.

Recommendation 2

The Committee recommends:

That section 4 of the Public Protector Act be amended to allow the Government to appoint no more than three Deputy Public Protectors;

That the second paragraph of section 12 of the Public Protector Act be amended to enable the Public Protector to delegate the powers listed in sections 26.1 and 26.2 to a Deputy Public Protector.

2. ACCESS TO THE PUBLIC PROTECTOR

The Public Protector is characterized as an informal recourse, free of charge and accessible to all. A telephone call is usually sufficient to request an intervention. There are offices in Quebec City and Montreal, and citizens living outside these two centres can call toll-free. When an investigation so requires, the Public Protector or one of his delegates can travel to the locality. During its public hearings, the Committee on Institutions asked the following question: Is the Public Protector sufficiently and equally accessible to all citizens of Québec?

2.1 Difficulty of access and insufficient information

At the 1989 Convention of Canadian Ombudsmen, hosted by Mr. Daniel Jacoby, many participants emphasized that the institution of the Public Protector seemed to be largely unknown to the public. Hearings participants were also unanimous in noting the public's lack of awareness of the Public Protector and the poor use of available services. This is particularly true for ethnic communities, Anglophones and native peoples because of linguistic or cultural barriers or distances.

A public opinion survey sponsored by the Public Protector in June of 1990 revealed that a majority of citizens who had no knowledge of the mandate of the Public Protector belonged to poorly-educated, low-income groups. The survey concluded that:

> "For the most part, the citizens who are unaware of the Public Protector's mandate belong to the poorer strata of Québec society. Moreover, there are more women than men in this group, which is mostly made up of residents of Montréal and of people from areas other than Québec City." [6]

Thus, the population likely to have the greatest need of the services of the Public Protector is unaware of the institution. This situation prompted the Public Protector to increase his efforts to reach those in need through regional tours and joint action with Communications Québec and other public agencies. Such efforts are primarily intended to reach "the illiterate, the elderly, the handicapped, the mentally disabled or intellectually handicapped, social welfare recipients and other

---

6 Visibility of the Public Protector, a public opinion poll in Québec; Analysis of the CROP Express results, August 1990, p. 11.

vulnerable clientele, the native population and the cultural and ethnic communities".

In addition, as early as 1988, the Public Protector developed a plan of action specifically targeted at the cultural communities, native populations and Anglophones. Lack of funding prevented implementation of all the means he advocated for attaining his objective, particularly an analysis of the needs of these groups and the development of communication strategies tailored specifically to them. Nevertheless, he did succeed in increasing representation of the targeted groups on his staff, an exercise that the Committee on Institutions, however, believes must be part of a true affirmative action program to be publicized as such.

In view of the institution's visibility problem, the Committee on Institutions has invited the Public Protector to develop an information program in concert with the Ministère des Communications, for the benefit of all clientele who may have need of the services but are unaware of their existence: cultural communities, native peoples, Anglophones, the poor and the poorly-educated.

The Committee further believes that the Public Protector should intensify his collaboration with the various government departments and bodies in order to make information on the services available at all government public service points. To ensure equal access to all, the Committee recommends that all government departments and bodies be required to inform their clients of the services of the Public Protector.

At his final appearance before the Committee on May 28, the Public Protector announced his intention to submit a plan of action for regionalizing reception services. The Committee on Institutions supports this initiative recognizing that, in order to be recognizable and accessible to all individuals of all origins throughout the province, the services of the Public Protector must be visible and available. The toll-free line (1-800) has proven inadequate in this respect.

As for other civil rights defence organizations represented in the different regions of Québec, the Committee believes that the reception services of the Public Protector should be regionalized. This would improve collaboration with local organizations and other government bodies and contribute to publicizing the mandate of the Public Protector.

This regional presence could also serve to accelerate processing the complaints of inmates incarcerated in outlying centres who claim that, at present, they must wait until a sufficient number justifies the visit of a delegate of the Public Protector.

Regionalization would also be valuable for native populations living in isolated areas, for whom accessibility to government services is a serious problem.

It is through a combination of communication strategies, concerted efforts and regionalization that the Public Protector's services will become more widely known and used. To support the Public Protector in his efforts to attain his objectives, the Committee on Institutions, within the context of its possible new role (point 3.2), invites the Public Protector to submit his plan of action at the same time as his budgetary estimates.

Recommendation 3

The Committee recommends:

That the Public Protector, in collaboration with the Ministère des Communications, develop an information program for target clientele: Anglophones, members of the cultural communities, native populations and poorly-educated and disadvantaged clientele, and that budgets be estimated accordingly;

That this information be available at all counters and offices where the public receives government services;

That the Public Protector submit to the Committee on Institutions his plan of action for reaching the previously-described objectives at the same time as he submits his budgetary estimates;

That the Public Protector draw up an affirmative action program for his staff;

That the Public Protector Act be amended to oblige government departments and bodies to inform their clientele of the services of the Public Protector.

Recommendation 4

The Committee recommends:

That the Public Protector introduce reception services in the regions he determines in his plan of action and that the necessary budgets be allocated to him;

That in the introduction of these services, the Public Protector take into consideration persons confined in houses of detention.

2.2 Appellation

During the public hearings, several participants justifiably commented on the fact that the French term "Protecteur du citoyen" does not express the fact that the Public Protector is also the protector of the province's female citizens, more than one-half the population.

While aware that the masculine designation complies with a provision of the Interpretation Act according to which the masculine form includes both genders, the Committee feels that the French title the *Loi sur le Protecteur du citoyen*, should be changed to the *Loi sur le Protecteur des citoyens et des citoyennes* to more accurately reflect the reality covered by the Act. Conversely, it found that the term "protecteur" or "protector" should remain unchanged to avoid any confusion with other institutions and to preserve the Public Protector's fragile visibility; women appointed to the position may use the feminine form of the word. As the Act has not yet been amended, we will continue to refer to it as the "*Loi sur le Protecteur du citoyen*" for the purposes of this report.

Recommendation 5

The Committee recommends:

That the French title, "Protecteur du citoyen", be replaced by "Protecteur des citoyens et des citoyennes", and that the Act be amended accordingly.

2.3 Use of the title

It was brought to the attention of the Committee that, in some agencies and establishments, those responsible for customer services are sometimes called "ombudsman" or "protector" without embodying all the characteristics of autonomy usually associated with the titles. To avoid a potentially confusing misuse of these terms and trivializing the office, the Committee contends that both terms should be reserved for the Public Protector to be used by other persons only with his written permission.

Recommendation 6

The Committee recommends:

That the terms "Public Protector", "protector" and "ombudsman" be reserved for the Public Protector, to be used by other persons only with the written approval of the Public Protector.

3. THE EFFECTIVENESS OF THE PUBLIC PROTECTOR

The role of the Public Protector consists of investigating citizens' complaints and intervening where there are reasonable grounds to believe that a person or group of persons may have suffered prejudice as the result of an act or omission of a public body, a department or one of its civil servants. In this respect, he and the employees designated by him have the powers of inquiry and the immunity of commissioners appointed under the Act respecting public inquiry commissions.

The Public Protector may intervene on his own initiative or at the request of any person or group of persons acting on his or its own behalf or on behalf of another person. Where, after investigation, he notes that the Administration has been guilty of negligence or has committed an injustice towards a person and has not remedied the situation, he must personally advise, in writing, the chief executive officer of the department or body concerned. At that time, he may also make a formal recommendation and ask to be informed of the corrective measures taken by the Administration. If the recommended changes are not implemented within a reasonable time, the Public Protector may formally notify the Government of this and, where he deems it expedient, may relate the case in a special report or in his annual report to the National Assembly.

Thus, the authority of the Public Protector lies in a power of recommendation supported by broad powers of inquiry. The law also provides for various additional methods the Public Protector may employ to correct administrative weaknesses: the annual report, a special report, the power to intervene systemically and preventively and, finally, the power to intervene publicly. Through its hearings, the Committee on Institutions wanted to gauge public opinion with respect to the means provided by law as well as other means that might eventually be implemented to assist the Public Protector in carrying out his mandate.

3.1 The power of recommendation

Because he has power of recommendation only, the Public Protector must rely principally on his powers of persuasion and dissuasion to have corrective measures taken in situations he deems unjust or prejudicial. His authority is purely moral; thus, he must be able to establish a good spirit of cooperation between his office and the Administration if his interventions are to be truly effective.

Despite the absence of real decision-making power, it appears that the Public Protector has proved to be a remarkably effective institution. Table 4 of the 1989-1990 report provides

details of interventions by the Public Protector in 1988-89 and 1989-90 [7]. We note that, where an inquiry shows that a person has suffered prejudice by the Administration, a remedy is obtained, in the majority of cases, after a simple intervention by the Public Protector's office. For this two-year period, the report indicates only six cases in which the Administration refused to make amends.

However, situations arise where the Administration agrees to apply corrective measures only in the future. Even if not every situation can result in a legal remedy, the injured parties have no choice but to go to court in order to obtain redress, at substantial costs that many cannot afford. In response to the desire expressed by various individuals that the Public Protector benefit from certain powers of coercion, the Committee submitted the following question to the public hearings: "Should the Public Protector be authorized to initiate proceedings before the courts when the Government fails to remedy a prejudicial situation to his satisfaction, and should he do so by acting on behalf of the person he judges to have been wronged?"

Several organizations favoured intervention in the courts by the Public Protector on behalf of citizens, but a majority of participants were opposed to the idea, seeing such intervention as contrary to the spirit of the institution of ombudsman, traditionally centred on conciliation and mediation. Believing it is rather a question of accessibility to justice, some preferred a review of the eligibility criteria for legal aid, in fact another topic of concern to the Public Protector.

In the opinion of the Barreau du Québec, the power of the Public Protector to go to court would have consequences for the effectiveness of the institution: a decline in credibility, the disappearance of necessary government cooperation, a dramatic drop in the success rate and a rampant increase in the number of court cases. In short, it would lead to an unjustified and undesirable overuse of the court system.

Despite the limitations of a simple power of recommendation, the Public Protector has affirmed his satisfaction and does not wish to obtain decision-making power. In the institution's first annual report (1969), the then Public Protector, Mr. Louis Marceau, described this absence of coercive methods as unavoidable and the very essence of the institution:

> "It was inevitable for many reasons. First of all, we would not be able to acknowledge a person's right to impose his viewpoints with regard to organization,

---

7 See Appendix 3.

> procedure or administrative discretion without directly affecting the executive authority responsible. Furthermore, it would be dangerous to admit that an authority bestowed with executory powers could exercise "privately" powers of inquiry as wide as its own. Finally and most importantly, it would be extremely difficult to attribute to a decision based on equity the same force as to a judgment dictated by a positive text of law [8]."

According to Mr. Marceau, the absence of coercive powers accounts for the flexibility of the institution, to the point of allowing the Public Protector to discuss the appropriateness of a text of law, which a court could not. During our hearings, the Commission des services juridiques made a similar distinction: "According to its constituting Act, the Public Protector intervenes where the legal process is not able to adequately correct the problem."

This line of argument has convinced the Committee members of the need to preserve the power of recommendation and powers of inquiry of the Public Protector. If the institution of Public Protector was created to protect citizens against injustices of the Public Administration, it must do so in a way that promotes harmonious relations between them. Recourse to the courts would not permit this.

3.2 Contribution of a parliamentary committee

Under section 27 of the Public Protector Act, where the Administration does not comply with his recommendations, the Public Protector may notify the Government in writing and, where he deems it expedient, may relate the case in a special report or in his annual report to the National Assembly. However, the Act gives no indication of possible action further to the tabling of a special report in the National Assembly.

Since 1986, the Secretary General of the Conseil exécutif has served as the intermediary for forwarding to the Cabinet cases of the Public Protector that were not able to be resolved at the level of the department or body. If intervention with the Government does not produce the expected results, the last recourse of the Public Protector rests with the National Assembly through a special report or his annual report. In his annual report of 1985, the Public Protector, Mr. Yves Labonté,

---

8 Public Protector, First Annual Report, 1969, p. 41.

wrote that the tabling of a special report in the National Assembly and the annual appearance of the Public Protector before a parliamentary committee were privileged means of establishing ongoing relations between the Public Protector and Members of Parliament [9]. Despite this fact, the Public Protector has never produced a special report under section 27 for several reasons including the absence of a forum in which to be heard.

Since 1990, the Committee of Institutions has been mandated to hear the Public Protector on his annual report. Within the framework of the general examination of the institution of Public Protector, the Committee wished to reflect on ways of improving the cooperation between the members and the Public Protector, as well as means by which the National Assembly could increase the effectiveness of the institution. It is from this perspective that the Committee asked whether it was desirable to institute a standing committee (or a parliamentary committee) to follow up on recommendations of the Public Protector not respected by the Administration.

The majority of participants responding to this point reacted favourably to the idea. Two organizations, Au bas de l'échelle (literally, "at the bottom of the ladder") and the Comité des travailleurs and travailleuses accidenté-e-s de l'Estrie nevertheless expressed the reservation that such a committee be allowed to intervene publicly and only at the request of the Public Protector. The Public Protector believes that such a parliamentary committee must act within the dynamics of the Public Protector Act by supporting, as far as possible, the authority and credibility of the institution. It must not be transformed into a court of appeal for the recommendations of the Public Protector.

The Committee members believe that a standing committee should be specifically mandated by the National Assembly to examine any matter related to the institution of Public Protector. Where it deems it appropriate, this committee may examine situations in which the Administration has delayed applying the changes recommended by the Public Protector. The Committee on Institutions, already mandated to hear the Public Protector's annual report, should be able to assume this role, particularly since its mandate in regard to the Public Protector has allowed it to acquire a broad base of knowledge on the institution.

The granting of such a special mandate to a parliamentary committee such as the Committee on Institutions would not, however, call into question the autonomy that distinguishes the Public Protector or any ombudsman. A committee would be called upon only to investigate cases submitted to it by

---

9 Le Protecteur du citoyen, Rapport annuel 1985. English Summary, p.6.

the Public Protector in a report on which it decides to hold hearings allowing it to hear, in particular, Public Administration representatives. In the opinion of the Public Protector, this committee would therefore constitute a privileged forum for bringing any situation of wrongdoing described in his reports to the attention of the National Assembly.

A committee will not be able to systematically endorse every recommendation made by the Public Protector but, based on the Ontario experience of a special parliamentary committee on its ombudsman, it rarely disagrees with the ombudsman. Indeed, the presence of such a committee can add weight to the recommendations of the ombudsman. The success of such parliamentary committees in Alberta, New Brunswick and Ontario prompted the Saskatchewan ombudsman to request the creation of a similar committee in that province [10].

In Quebec, it can be presumed that the publicity surrounding the public hearings of a parliamentary committee will provide an additional means of persuading the Administration.

Within the framework of this new special mandate, the Committee, in addition to reviewing the Public Protector's annual report, will consider and approve his budget, verify his financial commitments and report on this to the National Assembly. Finally, it will be able to examine the special reports of the Public Protector on Public Administration wrongdoings and hear all interested parties on this subject

Recommendation 7

The Committee recommends:

That the Committee on Institutions be specifically entrusted by the National Assembly with the task of studying any question related to the institution of Public Protector and, in particular, that the Committee on Institutions assume the following duties:

- hear the Public Protector each year concerning his annual report;

- examine, if it deems it expedient, the special reports of the Public Protector regarding the failure of certain departments or bodies to comply with his recommendations and hear interested parties on the subject;

---

10 Ombudsman of Saskatchewan, Seventeenth Annual Report, p. 2.

- consider and approve the annual budgetary estimates and plan of action of the Public Protector, examine his financial commitments and make a report to the National Assembly.

3.3 Annual Report

At his final appearance before the Committee on Institutions on May 28th, the Public Protector, Mr. Daniel Jacoby, described the institution of the Public Protector as "the eyes and ears of the National Assembly in our society with regard to relations between the Public Administration and the citizens."

From this perspective, the Public Protector Act provides several means by which the Public Protector can bring to the attention of the National Assembly situations that could damage good relations between the Public Administration and the citizens. One of the principal means is the annual report.

Section 28 of the Public Protector Act obliges the Public Protector to transmit to the President of the National Assembly an annual report of his activities during the preceding year. Paragraph 2 of section 28 indicates the contents of the report:

> "The report shall set out the cases in respect whereof the Public Protector made a recommendation pursuant to section 26.2 or issued a notice pursuant to section 27 and, where such is the case, the corrective measures taken by the authority concerned."

In the second part of his 1989-1990 annual report, the Public Protector gives an overview of the situation in the various departments and agencies under his jurisdiction and provides examples of his interventions and the corrective measures taken to remedy wrongdoings. The last section contains various statistical tables showing the number of complaints made against each department and body [11], and percentages for the principal causes of wrongdoing identified. Table 4 (Appendix 3) presents the number and percentage of requests for information, the number of refused requests for intervention and the number accepted. It includes data on the number of times remedies were obtained (762 in 1989-1990) and the number of times the Administration refused to act on the recommendations (3 in 1989-1990).

---

11 See Appendix 4.

Several individuals and organizations presenting briefs before the Committee expressed disappointment at the lack of detail provided for those instances where the Administration refused to follow up on recommendations of the Public Protector. In response to Committee inquiries, the Public Protector took note of the fact that the annual report did not seem to be sufficiently explicit with regard to the number of recommendations refused, this information having been integrated into the main body of comments for each department or body.

The Committee members are of the opinion that the annual report meets two objectives, one formal and the other social. In the first case, it is the legislative instrument through which the Public Protector accounts to the authority to which he is responsible, the National Assembly, on the manner in which he carries out his mandate and the difficulties he encounters in this task. In the second case, it is a special communication tool that allows citizens to be informed of efforts by the Administration to ensure a better quality of services. It is therefore important that the citizens benefit from all the required information, particularly when departments or agencies resist the application of measures designed to improve the quality of their services.

It seems consistent that, in a concern not to obstruct settlement of a case, the Public Protector may choose not to expose certain cases "in the public arena" while any possibility of settlement remains. It would nevertheless be desirable, particularly in cases of categoric refusal to comply, that the annual report include more details on cases where the recommendations of the Public Protector have gone unheeded and that the information be easily identifiable in the report. On this subject, we give the example of the 1988-1989 annual report of the Ontario Ombudsman in which Part II is devoted to a detailed account of cases where the ombudsman's recommendations were rejected by the governmental organization. We would also be interested in seeing a table in the annual report, as was previously included, illustrating the results of the Public Protector's intervention in cases of wrongdoing and broken down for each of the departments and agncies concerned [12].

---

12 See Appendix 5.

Recommendation 8

The Committee recommends:

That, in his annual report, the Public Protector provide more detail regarding cases in which the Administration refuses to follow his recommendations.

3.4 Intervention in equity

Any legislation respecting the ombudsman must be broadly and liberally interpreted. Such is the meaning of the ruling of the Supreme Court of Canada in the previously-cited Friedman decision. In the reasons provided by former Chief Justice Dickson, the highest Canadian court, noting the absence of legal recourse for numerous cases of government wrongdoing, emphasizes the restorative nature of ombudsman legislation.

Section 26.1 of the Public Protector Act allows the Public Protector to intervene where there have been unreasonable, unjust, arbitrary or discriminatory actions. However, contrary to the Ombudsman Acts of British Columbia and Ontario, the Act does not expressly stipulate, as grounds for intervention, that an act or omission of any representative of the Administration be based on a legislative or regulatory provision or practice that is unfair, arbitrary or discriminatory.

Although the Act already authorizes the Public Protector to intervene in equity, the Committee on Institutions believes it would be appropriate to harmonize this legislation with other Ombudsman Acts that expressly provide for the possibility of correcting unfair or discriminatory situations resulting from a decision made in accordance with a legislative or regulatory provision or an established practice.

Recommendation 9

The Committee recommends:

That section 26.1 of the Public Protector Act be amended by adding, between paragraph 2 and paragraph 3, a provision enabling the Public Protector to intervene whenever a decision rendered by a person or body under his authority is based on a legislative or regulatory provision or practice that is unfair, abusive or discriminatory.

3.5 Prevention and the systemic approach

In the section of the hearings document dealing with the effectiveness of the Public Protector, the Committee posed the following questions with regard to his powers to act in a preventive and systemic capacity:

> "Is it desirable that the Public Protector increasingly intervene in a preventive manner? Should he increasingly act on a systemic basis or should he give greater importance to resolving individual complaints? Does he make sufficient use of his power of investigation on his own initiative?"

These questions were inspired principally by comments made at the Canadian Ombudsmen Convention held in Quebec City in the fall of 1989. In the course of the deliberations, two different notions of the role of ombudsmen emerged: one, to the effect that the ombudsman should devote himself to the examination of individual complaints and limit systemic action; the other, to the effect that the treatment of cases on a one-to-one basis will not end a situation of generalized injustice and that the Public Protector should concentrate on systemic intervention. Similarly, some hearings participants were somewhat opposed to a preventive approach by the Public Protector, stating that he should remain on the fringe of policy drafting, while others considered preventive action conducive to reducing the number of complaints.

The majority of respondents believed it was important that the Public Protector intervene systemically, on the condition that his first responsibility remain the investigation of individual complaints. Many insisted on the necessity of going to the source of prejudicial situations through a systemic approach.

With regard to prevention, a small number of organizations and individuals had reservations with respect to the participation of the Public Protector in the drafting of standards or policies, particularly where he agrees to advise government departments or agencies. They believe intervention of this nature requires great caution and that there is the real danger of the ombudsman feeling bound by a decision made under a standard determined according to his advice. However, participation of the Public Protector in a parliamentary committee studying draft legislation was viewed favourably.

The Public Protector believes that his role is not to give an opinion on the political appropriateness of an Act, but rather on the implementation of the intention of the legislator through administrative practices and the establishment of standards: the means, not the ends, of a law. However, since the distinction

between political and administrative appropriateness is not always clear, he recognizes that participation of this nature must be carried out with a certain reserve.

Systemic intervention by the ombudsman is facilitated by the fact that the Act allows him to intervene on his own initiative without a complaint having first been addressed to him. Thus, he can intervene when an individual appears to have suffered or is about to suffer prejudice. He recently noted that his office had no statistics on the number of such cases and intends to compile statistics of this nature from now on.

In the Committee's opinion, the proliferation of government services in the past twenty years and the significant increase in complaints at the office of the Public Protector makes it desirable, if not essential, for the Public Protector to intervene both preventively and systemically. It is therefore appropriate that he use the power of recommendation granted to him under section 27.3 of the Act in order to prevent potential prejudicial situations for citizens. Similarly, it is desirable that he make use of his power of inquiry on his own initiative for systemic intervention. However, the Committee considers it important that the Public Protector remain vigilant in keeping the credibility of the institution intact.

3.6 Resorting to the media

The journalist Jacques Dufresne had this comment on the exercise of the authority of the Public Protector on the Administration:

> "His powers can be exercised only through persuasion. His effectiveness depends on the combination of respect and fear that he strikes in civil servants. Respect is inspired by who he is and, through his freedom of expression, he instills fear [13]."

This last sentence clearly shows the importance to the effectiveness of the Public Protector of the power to intervene publicly, particularly through the media, granted him by section 27.4 of the Act. According to the terms of this section, the ombudsman can comment publicly on a report he has submitted to the National Assembly or on any intervention, even in the course of an investigation.

---

13 Jacques Dufresne, "L'ombudsman et les conflits dans le secteur public", (The ombudsman and conflicts in the public sector, free translation), La Presse, November 4, 1989.

Recalling that the possibility of resorting to the media remains one of the strongest guarantees of independence and effectiveness for the Public Protector, the hearings document invited the public to comment on the appropriateness of the Public Protector using the media when he is confronted with the Administration's failure to follow up on his requests or recommendations. Again, this question was inspired by conflicting viewpoints expressed during the 1989 Canadian Omudsmen Convention.

Responding individuals and organizations expressed satisfaction with regard to interventions by the Public Protector in the media.

The Committee on Institutions believes that, as the Public Protector has only a simple power of recommendation, his authority could not be exerted if the Legislature had not provided additional means by which he can convince the Administration to put an end to instances of abuse or injustice. In this respect, the deterrent or persuasive effect of occasionally threatening to bring certain unfair or abusive acts to the public's attention cannot be underestimated. This power is thus essential to the institution of Public Protector and should not be called into question.

3.7 Interruption of prescription

The Public Protector has asked the Committee on Institutions, in the review of his mandate, for an amendment of his constituting Act to provide that the agreement by his office to investigate a complaint have the effect of interrupting civil prescription or the time limit for carrying out an administrative remedy.

Situations arise where a person who lodges a complaint with the office of the Public Protector is obliged, despite this intervention, to pursue a civil or administrative lawsuit at the same time since these procedures must often be undertaken within a designated period if the person is not to forfeit his rights. In the opinion of the Public Protector, this inevitably leads to pointless expense and misunderstanding, despite the fact he has intervened in the case or is in the process of settling it.

However, two organizations also brought to the Committee's attention cases of individuals obliged to forego intervention by the Public Protector in order to preserve their right to a review procedure under the Act respecting industrial accidents and occupational diseases [14]. A person who wishes to

---

14 R.S.Q., Chapter A-3.001.

contest a ruling of the Commission de la santé et de la sécurité du travail (C.S.S.T.) has, in some cases, only 30 days to do so. In contesting, that person waives the administrative review of the decision rendered by the Commission as provided in section 365 of the Act, since the review process is possible only with the consent of the other party. As the C.S.S.T. no longer has the power to reconsider its decision, intervention by the Public Protector becomes illusory.

It is the opinion of the Committee on Institutions that the introduction of a new provision in the Public Protector Act to interrupt prescription would be equivalent to reversing the statutory scheme by which resorting to the ombudsman is an alternative form of recourse available to citizens only in the absence of other adequate recourse.

In addition, interruption of prescription would be tantamount to considering recourse to the Public Protector as a legal remedy, when in fact the Public Protector is an alternative to the legal remedy.

The law concerning prescription would also be affected since, under section 2224 of the Civil Code of Lower Canada, a judicial demand interrupts prescription. However, since recourse to an administrative tribunal is not considered to be a judicial demand, it does not have the effect of interrupting prescription.

Some Québec legislation provides for the interruption of prescription to protect rights in civil lawsuits [15]. For example, in the case of the Charter of human rights and freedoms, filing a complaint with the Commission des droits de la personne causes prescription of any civil action concerning the same facts to be interrupted until it ceases to have effect, until a settlement is reached between the parties or until proceedings are instituted before the courts. This measure can be explained by the nature of the cases submitted to the Commission and by the periods required for investigation. Furthermore, under its Act, when the Commission decides to commence proceedings at the end of an investigation, it must take the side of the person it believes to be a victim of discrimination.

The situation of the Public Protector is different. Contrary to the Commission, he cannot address a tribunal by siding with a person he believes to be a victim of wrongdoing. In

---

15 An Act to promote good citizenship, R.S.Q.,Chapter C-20, section 19; Crime Victims Compensation Act, R.S.Q., Chapter I-6, section 12; An Act respecting labour standards, R.S.Q., Chapter N-1.1, section 116; Charter of human rights and freedoms, R.S.Q., Chapter C-12, section 76.

addition, his period of investigation is shorter; more than half the inquiries are resolved within two months. As the Public Protector himself acknowledges, the interruption of prescription would lead to prolongation of such time periods. If his intervention does not give the expected results, the waiting period before receiving the tribunal's executory ruling would be needlessly extended. Since the Public Protector is often involved in complaints concerning the sluggishness of procedures before administrative tribunals, the result might be directly contrary to the effect sought. In cases where the interests of private parties are at stake, each could suffer the consequences of the prolonged period.

It should be noted that none of the Acts providing for the interruption of prescription of civil lawsuits provide for a suspension of the time periods for carrying out an administrative remedy. In the other Canadian provinces, no Act respecting the ombudsman includes a provision to interrupt prescription or the time limit for the carrying out of an administrative remedy. Nor does a similar provision seem to exist in foreign legislation instituting ombudsmen.

The Committee on Institutions consequently considers that the agreement by the Public Protector's office to intervene on behalf of a citizen should not interrupt prescription or the time limit for carrying out an administrative remedy. However, the Committee considers that the introduction of a remedy before an administrative body should not prevent the Public Protector from effectively pursuing his intervention. In the particular case of the C.S.S.T., contesting a decision before a review committee should not prevent it from reconsidering its decision to follow up a recommendation by the Public Protector. Section 365 of the Act respecting industrial accidents and occupational diseases should be amended accordingly. In addition, it would be desirable for the Public Protector to draw the attention of the Government to any legislative or regulatory provision which leads to prejudicial situations, in particular when the time periods provided for carrying out an administrative remedy are too short.

Recommendation 10

The Committee recommends:

That section 365 of the Act respecting industrial accidents and occupational diseases be amended so that the filing of an application for review is not a obstacle to administrative reconsideration by the CSST of a decision, thereby allowing the CSST to implement a recommendation of the Public Protector;

That the Public Protector draw the attention of the Government to any legislative and regulatory provisions that result in prejudicial situations, in particular because of the inadequate time limit provided for carrying out a civil or administrative remedy.

4. JURISDICTION OF THE PUBLIC PROTECTOR

In its ruling regarding the Ombudsman of British Columbia, the Supreme Court recognized the importance of the institution of ombudsman in administrative problems that the judiciary, legislative and executive branches cannot resolve effectively [16].

This applies as much to Québec's Public Protector as to the Ombudsman of British Columbia. Indeed, as Chief Justice Dickson indicated, all provinces except Prince Edward Island (and now Newfoundland) have an Ombudsman Act similar to that of British Columbia by which to make amends for wrongdoings committed by the Public Administration. However, the jurisdiction varies from one Act to the other. In New Brunswick, the ombudsman's jurisdiction expressly covers the municipal, hospital and school sectors. The Public Protector of Québec apparently has the most limited jurisdiction with regard to public bodies.

The Public Protector has jurisdiction solely over the departments and bodies whose staff is appointed and remunerated under the Public Service Act, with the exception of the Conseil exécutif, the Conseil du trésor and the chief electoral officer. He therefore has no jurisdiction over public corporations nor over other government bodies whose staff is not part of the public service. Nor can he scrutinize the activities of institutions belonging to the health and social services or education network. Municipalities are not subject to his jurisdiction. For the last fiscal year, the Public Protector was obliged to turn down more than two thousand requests for intervention related to sectors outside his domain, an increase over the 1,800 plus of the preceding fiscal year. For these reasons, the Committee raised the question of broadening the mandate of the Public Protector to cover all government bodies and institutions.

4.1 Government agencies not governed by the Public Protector Act

Adopted in 1968, the Public Protector Act, in sections 14 and 15, limits the jurisdiction of the Public Protector to departments and bodies whose staff belongs to the public service. At that time, the presence of the Québec government was most apparent in the services of its various departments. Since a limited number of government bodies existed, the criterion used to define the jurisdiction of the Public Protector allowed him to cover nearly all government activity, even if some public bodies, such as Hydro-Québec, escaped scrutiny. However, over the years the scope of his jurisdiction has been reduced with the creation of

---

16 [1984] 2 S.C.R. 447, p. 461.

new administrative bodies whose staff is not part of the public service and with administrative changes brought to other bodies. Thus, the former public servants of the Ministère des Approvisionnements et Services over which the Public Protector had jurisdiction before they were transferred to the Société immobilière du Québec ("Québec real estate corporation"), are no longer within his jurisdiction even though they carry out essentially the same duties.

In the eyes of many, including the Public Protector, this particular criterion to restrict the scope of the ombudsman's activity is anachronistic, outdated and deprives many citizens of the possibility of recourse to the ombudsman when their rights have been denied because of acts by persons who are nonetheless paid out of public funds. According to the group Au bas de l'échelle, no clear and logical reason exists for this. The Public Protector is therefore requesting a broadening of his mandate to cover, in addition to those bodies whose staff is appointed and paid according to the Public Service Act, any government body which meets one of the following conditions:

> -the Government, or a minister, appoints at least the majority of its members;
>
> -the capital is part of the public domain.

All three criteria correspond to the definition of a "government body" or "public body" found in most texts of law in Québec, particularly in section 66 of the Act respecting the National Assembly [17]:

> "For the purposes of this Act, a public body is a body to which the National Assembly, the Government or a minister appoints the majority of the members, to which, by law, the personnel is appointed or remunerated in accordance with the Public Service Act (chapter F-3.1.1), or whose capital forms part of the public domain."

An identical definition can be found in An Act to promote the advancement of science and technology in Québec [18] and in the Act respecting the lands in the public domain [19]. The

---

17 R.S.Q., c. A-23.1.

18 R.S.Q., c. D-9.1, section 1.

19 R.S.Q., c. T-8.1, section 4.

Act respecting Access to documents held by public bodies and the Protection of personal information gives the same definition of "government agencies", specifying, however, that it excludes municipal and school bodies and establishments within the network of health and social services [20]. The Regulations Act applies to any regulation made or approved by the Government or an agency the majority of whose members are appointed by the Government or a minister, whose staff must be appointed or remunerated in accordance with the Public Service Act (chapter F-3.1.1), or at least one-half of whose capital forms part of the public domain [21].

The jurisdiction of the Auditor General covers, among others, bodies for whom the Government or National Assembly appoints the majority of members and any public corporation of which the majority of shares are held by the Government.

The definition of a "public body" contained in the Public Protector Act is without a doubt much more restrictive than that which appears overall in Québec legislation. Similarly, it appears to be much more limited than that found in the ombudsman Acts of other provinces. In Nova Scotia, the jurisdiction of the ombudsman includes bodies subsidized through public funds where the majority of members are appointed by the Government. In British Columbia, Manitoba, New Brunswick and Saskatchewan, it includes agencies whose directors are:

-appointed by legislation, a Minister or the Lieutenant-Governor-in-Council;

-in carrying out their duties, public officials or officials of the province; or

-accountable to the province.

In Alberta, the definition of "provincial agency" includes crown corporations. In Ontario, the jurisdiction of the ombudsman covers the entire government apparatus, i.e. any department, board or other government administrative service, including its agencies. The expression "agency" is not defined and must be interpreted very broadly.

Therefore, it appears appropriate that the Public Protector's jurisdiction be extended to bodies where the Government or a Minister appoints at least the majority of its members or whose capital is part of the public domain, except those the Government will expressly decide to exclude.

---

20 R.S.Q., c. A-2.1, section 4.

21 R.S.Q., c. R-18.1, section 2.

Some special exclusions were recommended by various bodies which testified before the Committee. For instance, the Barreau du Québec believes that bodies falling under the direct control of the National Assembly should not be subject to scrutiny by the Public Protector. However, the Committee decided not to retain this recommendation. It believes that the Public Protector should be able to intervene with regard to any body whose acts are likely to affect the rights of citizens, even if the National Assembly appoints most of its members or directors.

The Syndicat des professionnelles et professionnels du gouvernement du Québec also had reservations regarding the inclusion of the Commission des droits de la personne under the jurisdiction of the Public Protector, since this would amount to a civil rights protection agency being subject to the control of another institution involved in the protection of rights. The Commission des droits de la personne has no objection to benefiting from the services of the Public Protector, except with regard to its decisions to refer a matter to a human rights tribunal.

The Committee on Institutions believes that the Commission des droits de la personne, as an body offering a variety of services to the public, should be under the jurisdiction of the Public Protector, but agrees that recourse to the Public Protector should not be used to appeal the Commission's decisions to refer a matter to a human rights tribunal.

The Commission des services juridiques (legal services commission) and the Barreau du Québec also voiced their opposition to any extension of the Public Protector's jurisdiction to the legal aid sector. One of their principal reasons was that legal aid cannot be described as a service provided by the State, except where it determines the eligibility of individuals for its services, in which case it assumes the function of a manager of public funds. However, eligibility for legal aid is determined by the regional legal aid corporations which are legal entities distinct from the Commission des services juridiques. Lawyers working for the corporations are not appointed and remunerated according to the Public Service Act. They are called upon daily to represent individuals in confrontation with the government apparatus. Furthermore, control over decisions regarding eligibility for legal aid is already performed by a review committee.

An opposing point of view, however, was expressed by organizations such as the Centre de recherche-action sur les relations raciales which insisted on the necessity of an ombudsman for legal aid users, in particular because of the importance of this service and the position of weakness in which its poorly informed clientele is found.

In the opinion of the Committee on Institutions, the Commission des services juridiques should be subject to the

jurisdiction of the Public Protector in the same way as any other government body which offers services to the population paid out of public funds. Regional corporations should also fall under the jurisdiction of the Public Protector when they carry out government activities such as determining eligibility for legal aid. The possibility of recourse to a review committee for matters of eligibility should not be an obstacle to recognition of the Public Protector's jurisdiction, the latter having to decide whether an appeal to a review committee constitutes a legal remedy under the meaning of section 18(1) of his Act. In no case, however, can professional action by a lawyer be subjected to the Public Protector's scrutiny, since he cannot intervene in contractual relations between a professional and his client, disciplinary control belonging instead to the professional corporation and the Office des protections.

Recommendation 11

The Committee recommends:

That section 14 be amended so that the jurisdiction of the Public Protector covers, in addition to government bodies whose staff is appointed and remunerated in accordance with the Public Service Act, bodies of which the majority of members are appointed by the Government or a Minister, or whose capital is part of the public domain, except for those expressly excluded by the Government.

Recommendation 12

The Committee recommends:

That the Public Protector have the authority to intervene with regard to the acts and failures to act of the Commission des droits de la personne;

That the Public Protector have the authority to intervene with regard to the acts and failures to act of the Commission des services juridiques and the regional legal aid corporations or of their employees, with the exception of professional acts, which are governed by the Professional Code.

4.2 The health and social services network

As indicated in its September 1990 hearings document, the Committee on Institutions began this current mandate "primarily to examine whether it is possible and appropriate to extend the field of responsibility of the Public Protector", in particular with regard to the health and social services sector.

First of all, it is important to point out that the Committee headed all work done on this matter, including the formulation of the resulting recommendation, before the passage of the new Act respecting health services and social services, assented to on September 4, 1991. Thus, this report does not take into account amendments made to that Act regarding the civil rights protection system within the health and social services network.

Testifying before the Committee at the outset of our examination, the Public Protector had identified what he considered to be the major deficiencies in the protection of rights of the network users: recourse mechanisms that are inadequate, barely functional, confused and at times non-existent; the captivity of the clientele; processing disparity in network institutions at both the regional and provincial levels; the absence of independent recourse outside the network.

To remedy certain deficiencies, the Public Protector proposed a three-pronged approach for dealing with complaints:

1. a mechanism for dealing with complaints set up by the institution itself;

2. secondary recourse at the regional level;

3. final recourse consisting in a formal and independent mechanism akin to that of the ombudsman.

Since the Public Protector has volunteered to perform the role of ombudsman in this network, the Committee on Institutions has submitted this issue to its public hearings on the Public Protector.

The matter raised a great deal of interest on the part of the organizations and individuals participating in the public hearings, one-fourth of the 62 briefs received being almost completely devoted to this issue.

During the hearings, a consensus became clear on the need for an independent and open recourse mechanism from outside the network, despite certain differences of opinion on the authority that should be in charge of this process. Some bodies opposed to the extension of the Public Protector's jurisdiction to the health and social services network believe that this role should instead be passed on to civil rights defence organizations, in line with the principles of an advocacy system as exists in the United States.

The Committee on Institutions believes that such organizations carry out essential work in promoting rights and in providing assistance and accompaniment services that they offer to people who need help, particularly in exercising recourse rights.

However, as the Public Protector maintains, they cannot really constitute "recourse" as such, because of the favourable prejudice they must keep to perform their role well. Recourse, on the other hand, supposes a neutral institution, with powers of inquiry, that would examine the position of each party before drawing any conclusions. Our hearings disclose a desire for the creation of this kind of independent and open recourse mechanism.

Some organizations, however, are concerned that the creation of an independent recourse mechanism for users of the health and social services network might cause a certain duplication of other recourse mechanisms by bodies performing special mandates in the protection of rights, such as the Commission des droits de la personne and the Commission de protection des droits de la jeunesse. Nevertheless, it must be pointed out that the area of jurisdiction for investigation of the Commission des droits de la personne is limited to complaints of discrimination and those concerning the exploitation of the elderly and handicapped, leaving many people without recourse when they have complaints on such matters as the quality of services. The Commission de protection des droits de la jeunesse intervenes when the rights of a child, recognized under the Youth Protection Act and the Young Offenders Act, have been infringed upon; its jurisdiction is therefore limited. The advent of a new form of informal recourse that would cover the entire network would complete existing avenues for recourse, as several organizations have noted. In cases where two jurisdictions overlap, it would be hoped that both institutions could work together in a joint initiative.

According to the majority of participants in the hearings, the person or authority that will assume responsibility for this new recourse will act as final recourse and intervene only for complaints that cannot be settled satisfactorily by the institution itself. The institution should set up its own complaint office and, thereafter, a regional office. In this way, users will be guaranteed an independent and impartial recourse to uphold their rights if their complaint is not settled at the two previous levels. In addition, this will allow for a certain uniformity in the examination of complaints across the province, guaranteeing everyone equal treatment of their complaints.

The implementation of a complaint processing mechanism in each of the 900 or so institutions of the network presupposes that a superior authority will assume the coordination for the entire province. The Public Protector has prior expertise in this field, since he has been able to help several bodies and departments set up complaint services and has prepared a document describing the basic features inherent to an internal complaint processing mechanism.

The members of the Committee on Institutions believe it would be appropriate for the Public Protector, in view of his

expertise and the interest he has demonstrated in creating in-house complaint processing mechanisms, to be consulted during the setting up of such mechanisms within the health and social services network. Similarly, it is hoped that the person or authority given the mandate of final recourse for the examination of complaints is further mandated to assess the in-house mechanisms set up in the network.

The framework of the hearings has permitted the Committee to note an overall need within the health and social service network for the creation of a level of final recourse that is effective, independent and open. It has, further, studied the appropriateness of entrusting this new responsibility to the Public Protector or to another authority whose sphere of intervention would eventually be limited to this network.

The institution of Public Protector unquestionably meets the criteria of disclosure and independence with regard to the Administration that is expected of an authority called upon to receive and examine complaints from persons who believe they have been wronged. The flexibility and absence of formality of this institution, combined with its great credibility both with the Government and the public, are elements which plead in favour of broadening its mandate to the entire sector of health and social services. A further advantage, as was emphasized by several organizations, relates to the effectiveness of the office which, as illustrated by the annual reports, has an almost total success rate in the application of his recommendations.

However, the current success rate leads us to reflect on the consequences of broadening the mandate to the health and social services sector. Some organizations wondered whether the Public Protector would not be overwhelmed by the number of requests for intervention and thus compromised in his level of effectiveness. During the last fiscal year, his office had to turn down 412 cases in the hospital sector as compared to 422 the preceding year. These statistics can not really be seen as indicative of the number of potential complaints should the mandate be extended to this network, however. Indeed, even if it were supposed that broadening the jurisdiction might result in a increase in requests, this would be partially offset by the fact that the Public protector would intervene only as final recourse.

In addition to the apprehension of certain organizations that the Public Protector could develop into a bureaucracy, the highly specialized and complex context of the health and social services network must be considered in choosing an authority other than the Public Protector to ensure the protection of rights in this sector. The suggestion to create a specialized institution for studying complaints in the hospital network, as exists in England and Sweden, could thus prove an interesting option.

In conclusion, the analysis of the situation in the health and social services network confirms the necessity of offering all network users access to an ultimate recourse mechanism to receive and study complaints relating to the services dispensed by an institution where it has not been possible to settle them in a satisfactory manner either within the institution concerned or at the regional level. The mandate could be assumed by the Public Protector or by another authority conforming with the criteria of neutrality, independence and disclosure required to guarantee users the effective processing of their complaints.

Recommendation 13

The Committee recommends:

That users of health and social services be able to benefit from an ultimate, effective, independent and open recourse, whether this is the Public Protector or another authority;

That the Public Protector be able to act as advisor when complaint processing mechanisms are devised in the health and social services network.

4.3 The education network

In the hearings document destined for organizations and individuals interested in the question of protection of citizens rights, the Committee on Institutions also examined the appropriateness of the Public Protector being given jurisdiction over bodies and institutions of the education network.

Unfortunately, there was a disappointingly meagre participation by the various organizations or institutions generally interested by education matters: no brief was received from student associations, parent associations or teachers' organizations. Only a handful of institutions presented briefs.

Among those who tabled a brief, the school board of the Island of Montreal stated its opposition to an extension of the Public Protector's mandate to the school network, in view of the fact that the Education Act already provides for several satisfactory mechanisms ensuring the protection of children. The Conférence des recteurs et des principaux des universités du Québec (directors and principals of Québec universities) opposes a possible association of university ombudsmen with the Public Protector, a development they feel would set a precedent giving a body outside the university a jurisdiction that no observable shortcoming in the current system can justify.

However, the Bureau des personnes handicapées, the Commission des droits de la personne and the Commission de protection des droits de la jeunesse reiterated their wish that the Education Act provide for an avenue of independent recourse for students and parents. In their estimation, although the new Act recognizes a great number of rights for both parents and students, it becomes very difficult to ensure these rights are respected if no possibility exists for submitting a conflict to arbitration by an impartial person or body able to act quickly. The courts are considered to offer limited service in the resolution of these conflicts because of the excessive delays and costs their use implies. As pointed out by the Commission des droits de la personne, missing only a few weeks of class can mean the difference between academic success or failure for a student.

Several examples of situations requiring rapid solutions were presented: children with intellectual handicaps who are in "special classes"; students suspended from a course by a teacher for the remainder of the school year because they refuse to apologize for remarks they made; students who drop out of their fifth year of secondary school at the beginning of the school year and who, a month later, are refused re-entry to the class. In these cases, the recourse provided for in the Act respecting the Conseil des commissaires is seen as insufficient, since it does not involve an authority outside the school system. The Act also provides for recourse to the Minister of Education, but only with respect to complaints regarding a teacher's conduct.

The Commission des droits de la personne has the jurisdiction to intervene in cases where grounds for discrimination against or exploitation of elderly or handicapped people is invoked. Thus, parents of pupils with an intellectual handicap placed in a special class could file a complaint with the Commission. However, the same possibility does not exist for other situations where a student's rights are violated by a decision concerning the student where discrimination or exploitation are not involved. Even in situations where the Commission des droits de la personne can intervene, this often means that the dispute is taken before the courts. Yet most school conflicts would be resolved more easily through a flexible formula of negotiation and arbitration similar to the intervention exercised by the Public Protector.

In view of these facts, the members of the Committee on Institutions believe it desirable that students at the elementary and secondary levels benefit from open, independent recourse outside the system. The Public Protector seems to be the appropriate authority to receive, as a final recourse, complaints from students or their parents who believe that their rights have been violated by a decision, act or omission on the part of the school, a school board or one of its committees. However, in the school sector as in the hospital sector, a problem arising from within an institution must, as far as possible, be resolved within

the same institution or, failing that, by a higher authority which has the power to approve its actions. Therefore, a complaint should be referred to the Public Protector only in final recourse after the student or his parents have addressed the institution and school board concerned, which should deal with complaints submitted to them within the time prescribed by law.

The Committee also believes that all college-level educational institutions should have their own complaint processing systems that combine the basic features of independence, neutrality and disclosure. Since no college or CEGEP came before the Committee, it was difficult to ascertain which institutions already had such mechanisms. Because these institutions are bodies created by the Government whose board of directors is appointed by the Minister of Higher Education, they should be subject to control by the Public Protector as the final recourse for complaints that have not been settled within the institution.

Among the universities, the Université du Québec à Montréal is the sole university affiliated with the Université du Québec to offer this service to its clientele. Concordia, Laval, McGill and Montreal universities all have an ombudsman.

The Committee on Institutions recognizes that the efforts by these universities to assume their responsibility for mistakes or omissions that may occur in their administration is a favourable indication of their capacity to offer fair and equitable treatment to their clientele. It also believes that such complaint processing mechanisms should be accessible to everyone, regardless of the region in which they live or the size of the university they attend.

Although ombudsmen are performing commendable work in the universities these days, they are not, in fact, vested with all the attributes essential to the role of ombudsman. Even if a university has placed the ombudsman at the highest level of decision-making authority, they are not able to benefit from the independence crucial to the carrying-out of their duties and, strictly speaking, do not have powers of inquiry. In view of this, it is hoped that shortcomings in a university's administration might also be scrutinized by an outside authority.

In its ruling on the application of section 32 of the Canadian Charter of Rights and Freedoms [22], the Supreme Court stated that universities benefit from decision-making freedom, reinforced by the importance of respecting academic freedom and, thus, cannot be considered "government bodies". However, as the Barreau du Québec reiterated in its appearance before the Committee, a university is a public decision-maker and a body that

---

22 McKinney c. Guelph University, [1990] 2 S.C.R. 229.

renders a public service. Its field of activity is determined by legislation, its funding is to a large extent ensured by the Government, and its internal decisions are subject to judicial control.

Thus, the Committee on Institutions, while acknowledging that problems within the university community must initially be resolved within the institution and respectful of their long tradition of autonomy, believes it appropriate that, in the exercise of their administrative duties, universities are subject to the jurisdiction of the Public Protector where a satisfactory solution cannot be found within the institution.

Recommendation 14

The Committee recommends:

That elementary and secondary level students be able to benefit from an independent, open recourse outside the network;

That the jurisdiction of the Public Protector be extended to enable him to intervene wherever he has reason to believe that, in the exercise of an administrative function, an employee of a school, school board or one of its committees has violated the exercise or enjoyment of a right recognized by the Education Act;

That the Public Protector be able to intervene only as the ultimate recourse, after the student or his parents have addressed the complaint to the school and the school board.

Recommendation 15

The Committee recommends:

That every college and university acquire a system for processing complaints that has the basic characteristics of independence, neutrality and disclosure;

That the Public Protector have the authority to intervene in any complaint involving a college or university student if it is not possible to settle the matter within the institution.

4.4 The municipality network

The Public Protector has no jurisdiction to intervene with regard to acts or omissions of municipal bodies or their employees. When the Public Protector Act was passed in 1968, Prime Minister Jean-Jacques Bertrand explained that the Government considered it wise to exclude municipal governments from the Public Protector's jurisdiction "for the moment", but that nothing prevented them from being included at a later point if public opinion so warranted [23].

Following a proposal by the Public Protector, the Committee on Institutions, within the framework of the hearings, requested public opinion on the appropriateness of extending the Public Protector's jurisdiction to municipal bodies under an optional system by which municipal corporations themselves decide whether they wish to fall under the jurisdiction of the Public Protector.

The poor response to this question did not facilitate the task for Committee members. Of the municipalities, the cities of Montreal and Quebec forwarded a brief to the Committee. The city of Montreal recommended that the jurisdiction of the Public Protector not be extended to municipal bodies, claiming it is the municipality's responsibility to ascertain the most appropriate structure for the impartial processing of complaints. Quebec City felt it is the obligation of the Gouvernement du Québec to subject all Quebec municipalities to the Public Protector's jurisdiction and consequently assume the costs. It reiterated, however, that the onus is on each municipality to set up a local administrative mechanism able to deal efficiently and swiftly with requests and complaints from its citizens. Municipalities unsuccessful in attaining this objective, thus necessitating the intervention of the Public Protector, would be required to reimburse the Gouvernement du Québec for a portion of the expenses incurred for extending jurisdiction to all Quebec municipalities.

In 1988, Quebec City requested and obtained from the National Assembly an amendment to its charter which authorized it to enter into an agreement subjecting it to the Public Protector's jurisdiction for processing complaints from its citizens. The cost of implementation and the low number of cases forecast unfortunately prevented materialization of the agreement. Nevertheless, the city would be willing to carry out a three-year pilot project where it would be subject to the jurisdiction of the Public Protector, provided that the Gouvernement du Québec covered the costs.

---

23 Quebec City, National Assembly, Journal des débats, (record of the National Assembly debates, our translation), p. 3507 (October 22, 1968).

A handful of organizations not directly related to the municipal level also submitted their opinions. The Comité provincial des malades objected to an extension of the Public Protector's mandate on the grounds that solutions to municipal problems could not be centralized, but had to be adapted to each city or town. The Chambre des notaires called for a study to determine whether extension of the "ombudsman formula" is necessary. If this proves to be the case, it recommends the creation of a Municipal Services Commissioner. The Barreau du Québec and the Centre de recherche-action sur les relations raciales (Research-action centre on racial relations) both favour municipal corporations voluntarily subjecting themselves to the jurisdiction of the Public Protector. However, the Barreau du Québec maintains that fields such as real estate appraisal should be excluded where another useful recourse exists. Lastly, the Syndicat des professionnelles et professionnels du gouvernement du Québec recommends that all municipal bodies be subject to the jurisdiction of the Public Protector.

Municipal administrations, because of the numerous services they dispense to the public, cannot avoid the mistakes and injustices likely to be committed by any administration. Taxpayers who feel they have been wronged by actions of their municipal administration should be able to benefit from adequate protection in this regard. From this point of view, it would be desirable for municipal administrations to acquire a quick and effective mechanism for processing complaints, within the limits permitted by their population base. As Quebec and Montreal so aptly pointed out in their briefs, it is primarily the responsibility of each municipality to set up a suitable management structure for complaints, provided such structure adheres to the criteria of independence and impartiality essential to the credibility and effectiveness of the office.

Similarly, Committee members believe each municipality must decide whether to grant its taxpayers access to an outside institution such as the Public Protector for the investigation of complaints with respect to its administration. Although New Brunswick and Nova Scotia legislation subjects municipalities to the jurisdiction of ombudsmen, testimony gathered by the Committee during the hearings favours a free choice for local administrations on this question.

Legislative amendments are necessary to allow intervention by the Public Protector in cases of complaints regarding municipalities: in the last two years of its existence, the Public Protector has had to turn down more than 1,400 complaints at the municipal level. In regard to this, it is hoped that any legal provision concerning the Public Protector's jurisdiction will be integrated into the constituting Act. The Committee cited the example of the Manitoba legislature which recently amended its Ombudsman Act to allow the ombudsman to enter into an agreement

with the City of Winnipeg enabling it to benefit from his services in return for certain fees [24].

The Committee on Institutions therefore finds it would be appropriate to amend the Public Protector Act to allow the Public Protector to enter into agreements with municipalities by which they can voluntarily subject themselves to his jurisdiction. The costs are to be defined in each agreement. Where applicable, municipal legislation will have to be amended accordingly.

Recommendation 16

The Committee recommends:

That the Public Protector Act be amended to permit the Public Protector to enter into agreements with the municipalities to enable them to voluntarily subject themselves to the jurisdiction of the Public Protector, with the costs to be defined in the agreement.

4.5 Labour relations

Under an express provision of its Act, the Public Protector cannot intervene in labour relations matters. In its hearings document, the Committee asked whether this exception should be continued.

Eight participants responded. All but one were opposed to extending the Public Protector's jurisdiction to the area of labour relations, emphasizing that the role of the ombudsman is to help settle differences between the State and citizens and not between an employer and employees. The Committee members share this opinion and thus consider that the exception in respect of labour relations matters should be sustained.

4.6 Administrative tribunals

According to section 18 of the Act, the Public Protector cannot intervene in respect of an act or omission:

> (3) of a public body or a person who or which, in the particular case, is bound to act judicially.

---

24 R.S.M. 1987, c. 0-45, amended by M.S. 1990-91, c. 10, section 2.

This provision, introduced into the Act in 1987, obliges the Public Protector to leave the exclusive right to examine acts or omissions of a person or body obliged to act judicially to the competent tribunals. Prior to this provision, the Public Protector could investigate the procedure of a government body or one of its members in the exercise of a quasi-judiciary function where he had reason to believe that a serious irregularity had occurred and that justice had not been or could not be served. However, the Public Protector has rarely been called on to exercise this power and, when procedural irregularities have been noted, the decision-making authority involved generally has not had the power to reopen the investigation or change the decision.

Within the framework of its general examination of the Public Protector's mandate, the Committee on Institutions, following the example of Ontario where the courts recognized the Ombudsman's jurisdiction over the substance of decisions and the procedure of administrative tribunals, wondered if the Public Protector should have similar powers.

The majority of briefs received objected to any intervention by the Public Protector with regard to administrative tribunals. La Conférence des membres de tribunaux administratifs du Québec, the Canadian Council of Administrative Tribunals and the Groupe de 13 présidents d'organismes d'adjudication believe that intervention by the Public Protector in this area would constitute interference in the legal domain and be tantamount to creating a disguised right of appeal for anyone dissatisfied with a ruling. In a similar vein, several organizations stressed the power of surveillance and control of superior courts over administrative tribunals and mentioned the reticence of courts to interfere with the substance of decisions rendered by administrative tribunals because of the specialized character of the tribunals. They also raised the point that, while administrative tribunals are bound by rule of law, the Public Protector bases his interventions largely on the concept of equity, which he substitutes for rule of law.

These organizations prefer a global reform of the administrative justice machine. One means of reform to be considered is the creation of an administrative justice council charged with receiving and examining complaints from the public.

Nevertheless, several individuals were of the opinion that excluding administrative tribunals from the Public Protector's field of intervention would be unjustified . They pointed out that tribunal members have neither the status nor the independence of judges and insisted they required supervision. The ruling of the Supreme Court in Friedmann was also cited in support of a possible extension of the Public Protector's jurisdiction to this area. In that ruling, the Supreme Court recognized that the expression "matter of administration" used in British Columbia legislation to delineate the jurisdiction of the ombudsman, includes all acts of

government bodies in the implementation of government policy. Only the activities of the Legislature and the courts would escape scrutiny by the ombudsman [25].

At his last Committee appearance, the Public Protector stated his belief that it is inappropriate to extend his mandate to administrative tribunals, recalling, however, that he retains full jurisdiction over the administrative facet of their activities. Although he is not empowered to have a clearly erroneous decision changed, he can recommend that the public body for whom the decision was rendered not avail itself of that decision in its entirety, that is, eliminate the erroneous part on its own initiative.

The Committee on Institutions thus does not consider it expedient to amend section 18 of the Public Protector Act to permit the Public Protector to intervene in respect of the procedure and decisions of individuals or authorities when they are bound to act judicially.

4.7 Private businesses with government contracts

Under section 16 of the constituting Act, the Public Protector has jurisdiction to intervene with regard to acts or omissions of a body or person performing, through delegation, the duties of a public body or person subject to his jurisdiction.

However, the Public Protector drew the attention of the Committee to the widespread practice of departments and bodies carrying out their mandates through service contracts with private enterprise, without resorting to delegation. It is his opinion that he should have the same jurisdiction to intervene with regard to the acts or omissions of a contractor where a citizen may have been wronged. The Committee submitted this issue to the hearings.

Precedents exist in support of the request presented by the Public Protector. In a brief tabled before the Committee, the New Zealand Ombudsman affirmed that he had the jurisdiction to examine the acts of any private business hired by a public service organization. The Alberta Ombudsman was in the process of negotiating a clause for inclusion in the service contracts of provincial departments and bodies, permitting him to investigate individual complaints concerning a service normally supplied by the Government that had in fact been provided by a contractor.

Few objections were presented in the briefs or during the hearings to broadening the Public Protector's mandate in this

---

25 [1984] 2 S.C.R. 447, p. 474.

way, except in respect to the choice of criteria for limiting his jurisdiction.

The Committee on Institutions believes that the Public Protector should be able to intervene with respect to acts or omissions of a person or body to whom a department or body under his jurisdiction has entrusted the performance of duties assigned to it by law.

Recommendation 17

The Committee recommends:

That section 16 of the Public Protector Act be amended to enable the Public Protector to investigate the acts or omissions of any person to whom a department or body under the authority of the Public Protector has entrusted the performance of duties assigned to it by law.

5. OTHER ISSUES

5.1 Transfer and promotion rights of staff of the Public Protector's office within the public service.

The Public Protector Act expressly excludes the Public Protector, his assistant and his staff, appointed or otherwise, from the provisions of the Public Service Act [26]. This provision was included when the Act was passed in 1968 as a means of ensuring the independence of the institution in relation to the public service, whose conduct it would be scrutinizing.

However, such exclusion presented problems. The Public Protector's staff was denied any mobility within the public service, which effectively prevented their developing a career plan. In addition, in order to enter the service of the Public Protector, public service employees first had to resign their current positions. In 1987, the Act was amended to allow the right to return to a position in the public service, through a transfer or a competition for promotion, for employees who had held a position in the public service immediately before being appointed to the staff of the Public Protector. The same right was accorded employees who had already been appointed to the public service on a permanent basis and who, on June 23 1987, held a regular position on the staff of the Public Protector.

The Public Protector requested that the same right of transfer and promotion to the public service be granted to his staff after three years in a permanent position with his office.

Some organizations, such as the Comité des travailleurs et travailleuses accidenté-e-s de l'Estrie, objected to such advantages with regard to public service openings for the staff of the Public Protector. They expressed concern that this situation might affect the institution's impartiality and credibility.

In the opinion of the Public Protector, the appearance of the institution's independence will not be affected by the amendment sought since its sole purpose is to allow his employees the benefit of mobility after a minimum of five years employment on his staff, permanent status only being granted after two years.

Under the Règlement sur les conditions de travail des employés du Protecteur du citoyen [27], working conditions in the public service apply in large part to the staff of the Public Protector. However, hiring procedures for permanent employees are

---

26 R.S.Q. c. F-3.1.

27 R.R.Q., c. P-32, r.1.

appreciably different. All public service job openings are announced by public notice; there is no such obligation for the Public Protector since the Public Protector Act contains no restrictions on the manner of appointing his employees.

In light of these circumstances, the Committee on Institutions believes it is unnecessary to change the existing provisions of the Act on this question.

5.2 Report on Activities

Under section 28 of its constituting Act, no later than September 30 of each year, the Public Protector must transmit an annual report of his activities during the preceding calendar year to the President of the National Assembly. The Public Protector has requested that the term "preceding calendar year" be changed to "preceding fiscal year" , in reality, a more accurate term. The Committee readily agrees to a technical change of this nature.

Recommendation 18

The Committee recommends:

That section 28 of the Public Protector Act be amended by replacing the words "preceding calendar year" by the words "preceding fiscal year".

ADDENDUM

Official Opposition Members Louise Harel, Jocelyne Caron and Rémy Trudel, have expressed disagreement with Recommendations 7 and 13 as submitted by the Committee on Institutions.

Recommendation 7 - Contribution of a parliamentary committee

On August 8, 1991, the members of the Committee on Institutions met to study the final recommendations to be drafted as a result of the review of the term of office, objectives, activities and management of the Public Protector. One of the recommendations submitted proposed that the Committee on Institutions study all proposals made by the Prime Minister with regard to the appointment of the Public Protector. A majority of the ministerial group did not accept this recommendation for inclusion in the final report. We have affirmed our support for such a recommendation, however, for the reasons outlined below.

First of all, we feel it is important to ensure the credibility essential to the office of Public Protector by appointing the representative or representatives of the institution in an impartial and fair manner. From accounts presented by groups during the hearings before the Committee on Institutions, it does not appear that the appointment of the Public Protector with the approval of two-thirds of the National Assembly Members offers an adequate guarantee. The Public Protector has affirmed he is in favour of such a recommendation, seeing in it "only positive elements likely to subsequently give more meaning to the vote by the Members of the National Assembly".

In several Canadian provinces, the ombudsman is appointed on the recommendation of a special committee with the responsibility for nomination proposals. British Colombia legislation specifically provides that the appointment of the ombudsman be made on the unanimous recommendation of a committee of the Legislative Assembly established for this purpose. Similar committees exist in the United States for nominating judges. The recommendation submitted was thus in keeping with the current North American trend of focusing attention on the method of appointing representatives of democratic institutions.

Finally, the proposed recommendation preserved for the Prime Minister all the latitude required for either pursuing or rejecting the decision of the Committee on Institutions. It was thus not excessive and should have been retained.

Recommendation 13 - The health and social services network

The Official Opposition Members cannot support the recommendation as formulated because it oversteps the mandate conferred on the Committee on Institutions. The questions raised, as submitted in the hearings document, were summarized as follows: Would it be appropriate to extend the jurisdiction of the Public Protector with respect to institutions in the health and social services network? If yes, under what terms and conditions? With its field of responsibility thus extended, would the Public Protector remain as efficient a recourse?

From numerous accounts by individuals working in the health and social services network, experts and the Public Protector, the Committee members concluded that the jurisdiction of the Public Protector could be extended to network institutions without compromising its effectiveness. At no time was the Committee required to consider the possibility of another body acting as the ultimate recourse mechanism for complaints coming from network institutions. This was not its mandate, and Recommendation 13 should read as follows:

> "That users of the health and social services network be able to benefit from an ultimate, efficient, independent and open recourse such as the Public Protector."

RECOMMENDATIONS

Recommendation 1

Whereas the Public Protector comes directly under the authority of the National Assembly in the same manner as the Auditor General and the chief electoral officer;

Whereas under the Election Act and the Auditor General Act, the chief electoral officer and the Auditor General already submit their budgetary estimates to the National Assembly;

Whereas the independence of the Public Protector with regard to the executive power must be ensured;

The Committee recommends:

That the Public Protector submit his annual budgetary estimates to the National Assembly;

That the National Assembly refer consideration and approval of the budgetary estimates of the Public Protector to the Committee on Institutions;

That the Committee on Institutions, after consideration and amendments if necessary, approve these budgetary estimates and report to the National Assembly;

That the Standing Orders of the National Assembly be amended in consequence, in particular section 17 of the operating rules of the National Assembly concerning the examination of financial commitments.

Recommendation 2

Whereas section 4 of the Public Protector Act provides for the appointment by the Government of a assistant to the Public Protector, on recommendation of the latter;

Whereas the term "assistant" leads to confusion and is inadequate in view of the true importance of the office and the role assigned to it;

Whereas it would be expedient that the Act provide for the possibility of appointing several Deputy Public Protectors;

Whereas it is important that the Public Protector be consulted in regard to the appointment of a Deputy Public Protector, in view of the personalized nature of the status of Protector, the uniqueness of his decisions and the required independence of the role;
Whereas, for greater efficiency, it would be appropriate that the Public Protector be able to delegate his powers of recommendation to his Deputy;

The Committee recommends:

That section 4 of the Public Protector Act be amended to allow the Government to appoint no more than three Deputy Public Protectors;

That the second paragraph of section 12 of the Public Protector Act be amended to enable the Public Protector to delegate the powers listed in sections 26.1 and 26.2 to a Deputy Public Protector.

Recommendation 3

Whereas the results of a survey carried out in 1990 on the visibility of the Public Protector showed that the general public, and particularly the disadvantaged and poorly-educated, have little knowledge of the institution and services of the Public Protector;

Whereas the institution of Public Protector is particularly poorly known outside the Québec region;

Whereas the services of the Public Protector are rarely used by the native populations, particularly those living in isolated regions where access to government services is limited by cultural, linguistic and geographic barriers;

Whereas the services of the Public Protector are also rarely used by members of the cultural communities and Anglophones;

Whereas the office of the Public Protector prepared a plan of action in 1988 in order to reach the native populations, cultural communities and Anglophones, but was unable to obtain the budget necessary to its implementation;

Whereas it is important that government departments and bodies provide their clientele with more information concerning the Public Protector Act;

The Committee recommends:

That the Public Protector, in collaboration with the Ministère des Communications, develop an information program for target clientele: Anglophones, members of the cultural communities, native populations and poorly-educated and disadvantaged clientele, and that budgets be estimated accordingly;

That this information be available at all counters and offices where the public receives government services;

That the Public Protector submit to the Committee on Institutions his plan of action for reaching the previously-described objectives at the same time as he submits his budgetary estimates;

That the Public Protector draw up an affirmative action program for his staff;
That the Public Protector Act be amended to oblige government departments and bodies to inform their clientele of the services of the Public Protector.

Recommendation 4

Whereas the introduction of regional reception services would permit better publicization of the services of the Public Protector to the whole of the Québec population and would accelerate the study of complaints, notably those from correctional institutions;

The Committee recommends:

That the Public Protector introduce reception services in the regions he determines in his plan of action and that the necessary budgets be allocated to him;

That in the introduction of these services, the Public Protector take into consideration persons confined in houses of detention.

Recommendation 5

Whereas the Public Protector is the protector of all citizens of Québec;

The Committee recommends:

That the French title, "Protecteur du citoyen", be replaced by "Protecteur des citoyens et des citoyennes", and that the Act be amended accordingly.

Recommendation 6

Whereas the nature of the institution of Public Protector or ombudsman is unique;

Whereas it is important to avoid any possible confusion for the public with other institutions that do not embody the fundamental characteristics of independence associated with the Public Protector or an ombudsman;

The Committee recommends:

That the terms "Public Protector", "protector" and "ombudsman" be reserved for the Public Protector, to be used by other persons only with the written approval of the Public Protector.

Recommendation 7

Whereas the Public Protector receives his mandate from the National Assembly;

Whereas it is desirable to establish improved means of cooperation between the Public Protector and the Members of the National Assembly, particularly in the implementation of the recommendations of the Public Protector;

Whereas a parliamentary committee constitutes an excellent forum to enable the Public Protector to bring to the attention of the National Assembly and the public any situation he judges prejudicial, as well as his recommendations for correcting it;

Whereas the Public Protector Act allows the Public Protector to make a special report to the National Assembly in the event any department or body fails to remedy a situation he judges prejudicial;

The Committee recommends:

That the Committee on Institutions be specifically entrusted by the National Assembly with the task of studying any question related to the institution of Public Protector and, in particular, that the Committee on Institutions assume the following duties:

- hear the Public Protector each year concerning his annual report;

- examine, if it deems it expedient, the special reports of the Public Protector regarding the failure of certain departments or bodies to comply with his recommendations and hear interested parties on the subject;

- consider and approve the annual budgetary estimates and plan of action of the Public Protector, examine his financial commitments and make a report to the National Assembly.

Recommendation 8

Whereas the annual report has an educational and preventive value;

Whereas it is important that the institution of Public Protector be as open as possible because of its neutrality and independence;

Whereas the public is entitled to be informed of the weaknesses of the public administration;

The Committee recommends:

That, in his annual report, the Public Protector provide more detail regarding cases in which the Administration refuses to follow his recommendations.

Recommendation 9

Whereas the Public Protector Act does not expressly provide that the Public Protector may intervene where an act or omission by a public servant is based on a legislative or regulatory provision or practice that is unfair, abusive or discriminatory;

Whereas it would be appropriate to include such a provision in the Act to facilitate reasonable interventions in equity by the Public Protector;

The Committee recommends:

That section 26.1 of the Public Protector Act be amended by adding, between paragraph 2 and paragraph 3, a provision enabling the Public Protector to intervene whenever a decision rendered by a person or body under his authority is based on a legislative or regulatory provision or practice that is unfair, abusive or discriminatory.

Recommendation 10

Whereas the philosophy of the Public Protector Act is to offer an intervention where the citizen has no other adequate legal recourse;

Whereas intervention by the Public Protector must be rapid and effective within an average time limit of two months;

Whereas intervention by the Public Protector results only in recommendations;

Whereas there are no grounds for amending the Public Protector Act to provide that acceptance of a complaint interrupts civil prescription or the time limit for carrying out an administrative remedy;

Whereas section 365 of the Act respecting industrial accidents and occupational diseases can be an obstacle to useful intervention by the Public Protector;

The Committee recommends:

That section 365 of the Act respecting industrial accidents and occupational diseases be amended so that the filing of an application for review is not a obstacle to administrative reconsideration by the CSST of a decision, thereby allowing the CSST to implement a recommendation of the Public Protector;

That the Public Protector draw the attention of the Government to any legislative and regulatory provisions that result in prejudicial situations, in particular because of the inadequate time limit provided for carrying out a civil or administrative remedy.

Recommendation 11

Whereas the Public Protector is mandated by the National Assembly to intervene whenever a citizen claims to have been wronged by an authority under the control of the Gouvernement of Québec entrusted with implementing a government policy or program;

Whereas, under sections 14 and 15 of the Public Protector Act, the Public Protector has authority only over government departments and bodies or persons designated by the National Assembly whose staff is appointed and remunerated in accordance with the Public Service Act, with the exception of the Conseil exécutif, the Conseil du trésor and the chief electoral officer;

Whereas the significant development of the public administration has rendered the criterion "whose staff is appointed and remunerated in accordance with the Public Service Act" inadequate to protect citizens against wrongdoings;

Whereas the complaint-processing mechanism of the Public Protector meets the requirements of the modern public administration and the needs of the public for a free and accessible system of justice;

The Committee recommends:

That section 14 be amended so that the jurisdiction of the Public Protector covers, in addition to government bodies whose staff is appointed and remunerated in accordance with the Public Service Act, bodies of which the majority of members are appointed by the Government or a Minister, or whose capital is part of the public domain, except for those expressly excluded by the Government.

Recommendation 12

Whereas the Public Protector must have competence over every act or omission performed by a governmental organization in the course of its administrative activities;

Whereas the Commission des droits de la personne, as a body offering services to the public, should be subject to the authority of the Public Protector;

Whereas, although the professionals and others in their employ are not appointed and remunerated in accordance with

the Public Service Act, the Commission des services juridiques and the regional legal aid corporations offer services to the public paid for out of public funds, particularly in regard to admissibility to justice;

Whereas the competence of the Public Protector would in no case be able to cover the normal course of services rendered by a professional to his client since these can be the object of other recourse;

The Committee recommends:

That the Public Protector have the authority to intervene with regard to the acts and failures to act of the Commission des droits de la personne;

That the Public Protector have the authority to intervene with regard to the acts and failures to act of the Commission des services juridiques and the regional legal aid corporations or of their employees, with the exception of professional acts, which are governed by the Professional Code.

Recommendation 13

Whereas there are major deficiencies in the protection of the rights of health and social services network users ;

Whereas one of the principal deficiencies identified by the hearings participants is the absence of an effective, independent, open recourse;

Whereas the institution is the primary dispenser of services and the principle of its accountability in the processing of complaints should therefore be recognized;

Whereas the regional authority is involved in the processing of complaints;

Whereas, due to restrictions of jurisdiction, the Public Protector has had to refuse more than 800 complaints from the health and social services network in the past two fiscal years ;

Whereas network users should be able to benefit from an ultimate recourse following processing of their complaints by the institution and the regional authority;

Whereas the Public Protector has acquired expertise in the area of the protection of rights;

The Committee recommends:

That users of health and social services be able to benefit from an ultimate, effective, independent and open recourse, whether this is the Public Protector or another authority;

That the Public Protector be able to act as advisor when complaint processing mechanisms are devised in the health and social services network.

Recommendation 14

Whereas, in section 1 and the following sections, the Education Act (R.S.Q. c. I-13.3) recognizes the rights of the student and his parents;

Whereas, in a decision involving a student or his parents, the Education Act provides for recourse to the council of commissioners of a school board or, in a complaint concerning the conduct of a teacher, for recourse to the Minister of Education;

Whereas the Education Act does not provide for open, independent recourse outside the network for students whose rights may have been violated by an act, omission or decision;

Whereas the Office des personnes handicapées, the Commission des droits de la personne and the Commission de protection de la jeunesse have unanimously recommended that the Education Act provide for the possibility of independent recourse for students and their parents;

Whereas the Public Protector would be called upon to play a role complementary to that of these three bodies in the protection of student rights;
Whereas, due to restrictions of jurisdiction, the Public Protector has had to refuse approximately 400 complaints from the school network in the past two fiscal years;

The Committee recommends:

That elementary and secondary level students be able to benefit from an independent, open recourse outside the network;

That the jurisdiction of the Public Protector be extended to enable him to intervene wherever he has reason to believe that, in the exercise of an administrative function, an

employee of a school, school board or one of its committees has violated the exercise or enjoyment of a right recognized by the Education Act;

That the Public Protector be able to intervene only as the ultimate recourse, after the student or his parents have addressed the complaint to the school and the school board.

Recommendation 15

Whereas every CEGEP or university student must be able to benefit from a recourse for any wrongdoing caused by the administration of the institution he attends;

Whereas every college and university should offer an internal complaint processing system that has the characteristics of independence, neutrality and disclosure;

Whereas the student clientele of colleges and universities should also be able to benefit from a final recourse outside the institution in cases which have not been settled in a satisfactory manner by the institution;

The Committee recommends:

That every college and university acquire a system for processing complaints that has the basic characteristics of independence, neutrality and disclosure;

That the Public Protector have the authority to intervene in any complaint involving a college or university student if it is not possible to settle the matter within the institution.

Recommendation 16

Whereas the Public Protector has had to refuse more than 1400 complaints from the municipal sector in the past two fiscal years;

Whereas, in view of the many public services they offer, municipal administrations should have a complaint processing mechanism, to the extent possible;

Whereas the Charter of the city of Québec was amended in 1988 to allow the city to sign an agreement with the Public Protector making it subject to the jurisdiction of the institution;

Whereas it would be appropriate to enable municipalities so choosing to offer their ratepayers the benefit of an outside vehicle to examine their complaints against the municipal administration;

The Committee recommends:

That the Public Protector Act be amended to permit the Public Protector to enter into agreements with the municipalities to enable them to voluntarily subject themselves to the jurisdiction of the Public Protector, with the costs to be defined in the agreement.

Recommendation 17

Whereas the role of the ombudsman is to protect any citizen who may be wronged by an act or omission of the public administration;

Whereas section 16 of the Public Protector Act gives the Public Protector the competence to intervene with any body or person performing, by delegation, the duties of a government department or body subject to his jurisdiction;

Whereas departments and bodies often entrust individuals and enterprises with certain responsibilities assigned to them by law, without recourse to delegation;

Whereas it is also important to protect citizens who may be wronged by an enterprise or person to whom a department or body has entrusted the performance of duties assigned to it by law;

The Committee recommends:

That section 16 of the Public Protector Act be amended to enable the Public Protector to investigate the acts or omissions of any person to whom a department or body under the authority of the Public Protector has entrusted the performance of duties assigned to it by law.

Recommendation 18

Whereas under section 28 of the Public Protector Act, no later than September 30 of each year, the Public Protector

must transmit a report of his activities during the preceding calendar year to the President of the National Assembly;

Whereas the words "preceding calendar year" should be replaced by "preceding fiscal year", which is more accurate;

The Committee recommends:

That section 28 of the Public Protector Act be amended by replacing the words "preceding calendar year" by the words "preceding fiscal year".

APPENDIX 1

List of individuals and organizations consulted

LIST OF INDIVIDUALS AND ORGANIZATIONS CONSULTED

1. INDIVIDUALS AND ORGANIZATIONS HEARD BY THE COMMITTEE

- HEARINGS OF JANUARY 24, 1991

Comité provincial des malades
represented by:

. Michèle Lamquin-Éthier, directeur général
. Jacqueline Crochetière, conseillère
. Abbé Jules Parenteau, conseiller
. Claudette Cousineau, agent de liaison

Comité des bénéficiaires, Centre hospitalier Robert-Giffard
represented by:

. Mario Samson, vice-président
. Mario Lortie, permanent
. Charles Rice, permanent

Le Groupe Auto-Psy provincial
represented by:

. Réjean Girard, membre du conseil d'administration
. Robert Marcoux, membre du conseil d'administration
. Claudine Laurin, permanente

Nicole Douville-Fontaine,
Public Curator
accompanied by:

. Marie Boivin
. Francois St-Cyr, responsable des relations avec la clientèle

Fédération québécoise des associations des familles et amis de la personne atteinte de maladie mentale
represented by:

. Paul-Émile Poirier, président
. Thérèse Poirier
. Gilles Dupont

LIST OF INDIVIDUALS AND ORGANIZATIONS CONSULTED (continued)

Micheline Lynch, ombudsman et déléguée du Protecteur du citoyen (Centre hospitalier régional de Lanaudière)

Jocelyne Charbonneau, ombudsman (Hôpital Rivière-des-Prairies)

Francine B. Bergeron, conseillère à la clientèle (Hôpital Sainte-Justine)

Commission de protection des droits de la jeunesse represented by:

. Vaughan Dowie, président

- HEARINGS OF JANUARY 25, 1991

Association des hôpitaux du Québec represented by:

. Henri Favre, président
. Krystyna Pecko, directeur des services professionnels au Centre hospitalier de Valleyfield
. Jean-Yves Simard, directeur général de l'Hôpital Sainte-Anne-de-Beaupré
. Huguette Blouin, conseillère à l'Association des hôpitaux du Québec

Association des centres d'accueil du Québec represented by:

. Mario Dolan, président
. Michel Clair, directeur général
. Gilles Proulx, secrétaire-trésorier

LIST OF INDIVIDUALS AND ORGANIZATIONS CONSULTED (continued)

Office des personnes handicapées du Québec
represented by:

. Gaston J. Perreault, président
. Lise Constantin, chef du Service de l'analyse et de l'évaluation de l'intégration

Centre hospitalier Douglas
represented by:

. Patrick J. Aucoin, adjoint au directeur général
. Francine Y. Bourassa, ombudsman
. Martha Bishop, secrétaire du Comité de bénéficiaires

Commission des droits de la personne
represented by:

. Jacques Lachapelle, président
. Marc Bilock, directeur du Bureau de Québec

Conseil des Atikamekw et des Montagnais
represented by:

. Ernest Ottawa, vice-président
. Ghislain Picard, vice-président
. Alain Bissonnette, avocat

Comité de bénéficiaires, Hôpital Louis-Hippolyte-Lafontaine
represented by:

. Diane Huard, présidente
. Lucien G. Landry, secrétaire-trésorier
. Alain Camirand
. Marie Côté
. Paryse Labrie
. Lyne Latulippe
. Jean-François Primeau
. Catherine Sabourin
. Roger Trépanier
. Francesca Trop

LIST OF INDIVIDUALS AND ORGANIZATIONS CONSULTED (continued)

- HEARINGS OF JANUARY 28, 1991

Commission des services juridiques represented by:

. Gilles Moreau, président
. Pierre Yves Bourdeau, avocat
. Christian Baillargeon, avocat

Conseil des communautés culturelles et de l'immigration represented by:

. Raymonde Folco, présidente

Regroupement des ressources alternatives en santé mentale du Québec represented by:

. Lorraine Guay, coordonnatrice
. Jacques St-Onge, membre du conseil d'administration

Congrès juif canadien - Région du Québec represented by:

. Richard Levy, vice-président
. Jack Jedwab, directeur des relations communautaires
. Alain Joffe, consultant, Comité ad hoc sur le Protecteur du citoyen
. David Sultan, conseiller politique

Grand Conseil des Cris du Québec represented by:

. Diom Roméo Saganash, vice-président
. Abel Bosum, chef de la Bande Crie de Oujé-Bougoumou
. François Robert, avocat

Daniel Mockle, professeur et docteur en droit (Université du Québec à Montréal)

LIST OF INDIVIDUALS AND ORGANIZATIONS CONSULTED (continued)

Association des Townshippers
represented by:

. Marisa Tessier, vice-présidente
. Carolyn Jones, membre du conseil d'administration
. Susan C. Mastine, directrice générale
. Barbara Verity, directrice générale adjointe

- HEARINGS OF JANUARY 30, 1991

Gilles Létourneau et Patrick Robardet

Barreau du Québec
represented by:

. Sylviane Borenstein, Bâtonnière du Québec
. Suzanne Vadboncoeur, directeur du Service de la recherche et de la législation
. Pierre Lemieux, membre du comité du Barreau sur le Protecteur du citoyen

Chambre des notaires du Québec
represented by:

. Jacques Taschereau, président
. Jean Lambert, président sortant
. Julien S. Mackay, directeur des Services professionnels

Syndicat de professionnelles et professionnels du gouvernement du Québec
represented by:

. Daniel Giroux, président
. Henriette Dumont, professionnelle de la Commission de la santé et de la sécurité du travail du Québec

Conseil scolaire de l'Île de Montréal
represented by:

. Joël Hartt, vice-président
. Reynald Laplante, directeur général
. Nicole Pelletier, secrétaire générale

LIST OF INDIVIDUALS AND ORGANIZATIONS CONSULTED (continued)

Conseil des tribunaux administratifs canadiens
represented by:

. Jean-François Gosselin, président du Conseil (commissaire au Bureau de révision de l'évaluation foncière du Québec)
. Margot Priest, secrétaire du Conseil et présidente du comité des politiques et de la législation (présidente de l'Ontario Telephone Service Commission)
. Jean-Marc Demers, administrateur représentant le Québec au conseil d'administration du Conseil (régisseur à la Régie des télécommunications du Québec)

Fédération nationale des associations de consommateurs du Québec (FNACQ)
represented by:

. Roger Beaudoin, coordonnateur du comité santé et services professionnels
. Lucie Dupré, intervenante à Auto-Psy de Québec, organisme membre de la FNACQ

Conférence des recteurs et des principaux des universités du Québec
represented by:

. Michel Gervais, vice-président de la CREPUQ et recteur de l'Université Laval
. Claire McNicoll, directrice générale
. Lucien Huot, protecteur universitaire à l'Université Laval
. Laurent Jannard, ombudsman à l'Université du Québec à Montréal

- HEARINGS OF JANUARY 31, 1991

Fédération de l'âge d'or du Québec
represented by:

. Philippe Lapointe, président
. Georgette Leblanc, administrateur au comité exécutif
. Nicole T. Moir, directrice générale intérimaire
. Martine Langlois, agente de recherche

LIST OF INDIVIDUALS AND ORGANIZATIONS CONSULTED (continued)

**Union des travailleurs(euses)
accidentés(es) de Montréal
represented by:**

. André André, président du conseil d'administration
. Rosa Garcia, membre du conseil d'administration
. Pierre Gareau, responsable de l'U.T.A.M.

**Comité des travailleurs et travailleuses
accidenté-e-s de l'Estrie
represented by:**

. Claude Dallaire
. Roch Lafrance

**Fondation pour l'aide aux travailleuses
et aux travailleurs accidenté-e-s
represented by:**

. Claude Petelle, coordonnateur
. Michel Pilon, avocat-conseiller

**Au bas de l'échelle
represented by:**

. Bernard Lemieux, président du conseil d'administration
. Brigitte Voyer, coordonnatrice

**Réseau d'action et d'information pour
les femmes (RAIF)
represented by:**

. Marcelle Dolment

**Action rurale démocratique enr.
et les Résidents ruraux d'Ascot inc.
represented by:**

. Robert Marcotte, président (A.R.D.)
. Monique Roy Clément (A.R.D.)
. Majella Simard (A.R.D.)
. Robert Clément (R.R.A.)

LIST OF INDIVIDUALS AND ORGANIZATIONS CONSULTED (continued)

Conférence des membres des tribunaux administratifs du Québec represented by:

- Lise Lambert, présidente de la Conférence et vice-présidente de la Commission des transports du Québec
- Georges Lalande, président de la Commission d'appel en matière de lésions professionnelles
- Jacques Forgues, membre du Bureau de révision de l'évaluation foncière du Québec
- Louis-Armand Cormier, commissaire à la Commission d'appel en matière de protection du territoire agricole

2. INDIVIDUALS AND ORGANIZATIONS WHICH FORWARDED BRIEFS FOR TABLING

- Alliance Québec
- Association des centres de services sociaux du Québec
- Bélanger, Mme Évelyne, ombudsman (Hôpital Notre-Dame)
- Centre de recherche-action sur les relations raciales
- Centrale de l'enseignement du Québec
- Commission d'accès à l'information du Québec
- Commission de la santé et de la sécurité du travail
- Commission des affaires sociales
- Conseil algonquin de l'Ouest du Québec
- Fédération des CLSC du Québec
- Fédération des familles d'accueil du Québec
- Geltman, M. Harold
- Groupe de 13 présidents d'organismes d'adjudication
- Groupe de défense des droits des détenu-e-s de Québec
- Jannard, M. Laurent, ombudsman (Université du Québec à Montréal)
- Ordre des infirmières et infirmiers du Québec
- Regroupement inter-organismes pour une politique familiale au Québec, Le
- Réseau d'aide aux accidentés
- Société d'habitation du Québec
- Sûreté du Québec
- Ville de Montréal
- Ville de Québec
- Ombudsman de l'Australie
- Ombudsman de la Nouvelle-Zélande
- Ombudsman de l'Alberta

APPENDIX 2

List of briefs submitted
to the Committee

LIST OF BRIEFS SUBMITTED TO THE
PARLIAMENTARY COMMITTEE

Action rurale démocratique enr.	55M
Alliance Québec	34M
Association des Centres d'Accueil du Québec	32M
Association des centres de services sociaux du Québec	29M
Association des hôpitaux du Québec	9M-9R
Association des townshippers	51M
Au bas de l'échelle	27M
Barreau du Québec	52M
Bélanger, Mme Evelyne, ombudsman (Hôpital Notre-Dame)	16M
Bergeron, Mme Francine B., conseillère à la clientèle (Hôpital Sainte-Justine)	31M
Centrale de l'enseignement du Québec	63M
Centre de recherche-action sur les relations raciales	48M
Centre hospitalier Douglas	7M-7R
Chambre des notaires du Québec	49M
Charbonneau, Mme Jocelyne, ombudsman (Hôpital Rivière-des-Prairies)	21M + lettre d'appui
Comité des bénéficiaires du Centre hospitalier Robert-Giffard	43M
Comité des travailleurs et travailleuses accidenté-e-s de l'Estrie	26M
Comité provincial des malades	36M + lettre d'appui
Comité de bénéficiaires, Hôpital Louis-H.-Lafontaine	37M + 37MA
Commission d'accès à l'information du Québec	19M

Commission de la Santé et de la Sécurité du travail travail	47M
Commission de protection des droits de la jeunesse	40M
Commission des affaires sociales	17M
Commission des droits de la personne du Québec	6M
Commission des services juridiques	13M
Conférence des membres de tribunaux administratifs du Québec	10M
Conférence des recteurs et des principaux des universités du Québec	12M - 12MA
Congrès juif canadien - région du Québec	58M
Conseil algonquin de l'Ouest du Québec	64M
Conseil des Atikamekw et des Montagnais, Le	41M
Conseil des communautés culturelles et de l'immigration du Québec	54M
Conseil des tribunaux administratifs canadiens	56M
Conseil scolaire de l'Île de Montréal	22M - 22MA
Curateur public du Québec, Le	25M
Fédération de l'Âge d'Or du Québec	23M
Fédération des CLSC du Québec	38M
Fédération des familles d'accueil du Québec	2M
Fédération nationale des associations de consommateurs du Québec (FNACQ)	44M - 44MA
Fédération québécoise des associations des familles et amis de la personne atteinte de maladie mentale, La	24M
Fondation pour l'aide aux travailleuses et aux travailleurs accidenté-e-s	15M
Geltman, M. Harold	4M
Grand Conseil des Cris du Québec	11M
Groupe Auto-Psy Provincial, Le	14M

Groupe de 13 présidents d'organismes d'adjudication	39M
Groupe de défense des droits des détenu-e-s de Québec	46M
Jannard, M. Laurent, ombudsman (Université du Québec à Montréal)	3M
Létourneau, Me Gilles, et Robardet, Me Patrick (Commission de réforme du droit du Canada)	45M
Lynch, Mme Micheline, ombudsman et déléguée du Protecteur du citoyen (Centre hospitalier régional de Lanaudière)	35M
Mockle, Me Daniel	57M
Office des personnes handicapées du Québec	5M
Ombudsman de l'Australie	60M
Ombudsman de la Nouvelle-Zélande	61M
Ombudsman de l'Alberta	62M
Ordre des infirmières et infirmiers du Québec	20M
Regroupement des ressources alternatives en santé mentale du Québec	42M
Regroupement inter-organismes pour une politique familiale au Québec, Le	33M
Réseau d'Action et d'Information pour les femmes (RAIF)	30M - 30MA
Réseau d'aide aux accidentés	1M
Société d'habitation du Québec	8M
Syndicat de professionnelles et professionnels du Québec	53M
Sûreté du Québec	18M
Union des travailleurs(euses) accidentés(es) de Montréal	50M
Ville de Montréal	59M
Ville de Québec	65M

APPENDIX 3

Extract from the 1989-1990 annual report of the Public Protector, Daniel Jacoby. English Summary, Table 4, p. 21.

Table 4

Action by the Ombudsman in 1988-89 and 1989-90

	1988-89		1989-90	
A- Requests for information				
Information provided	2 870	88%	2 342	94%
No assistance possible	385	12%	143	6%
Total	3 255	100%	2 485	100%
B- Requests for intervention refused				
Information given on reasons for refusal and on recourses	11 029	99%	10 853	99%
No communication possible	130	1%	137	1%
Total	11 159	100%	10 990	100%
C- Requests for intervention withdrawn by the citizen	631		759	
D- Requests for intervention accepted				
▼ Non-aggrieved person:				
Explanation of the situation	3 594	66%	3 427	66%
Additional service rendered	222	4%	224	4%
No communication possible	6	—	47	1%
Remedy obtained for the future	15	—	10	—
▼ Person aggrieved but Administration not responsible:				
Situation remedied at our request	121	2%	111	2%
▼ Person aggrieved by the Administration:				
Remedy obtained following intervention	839	15%	762	15%
Remedy obtained before or during the intervention	315	6%	324	6%
Remedy impossible (explanation or service rendered)	162	3%	202	4%
Remedy for the future only	129	2%	77	1%
Remedy obtained through formal recommendation	7	—	18	—
Answer pending on requested remedy	15	—	21	—
Remedy requested but refused by the Administration	3	—	3	—
Total	5 428	100%	5 226	100%
E- Interventions accepted in progress at year end	1 497		2 243	
Grand total	21 970		21 703	

APPENDIX 4

Extract from the 1989-1990 annual report of the Public Protector, Daniel Jacoby. English Summary, Table 7, p. 24-25.

Table 7

Departments and agencies involved in interventions by the Ombudsman in 1989-90

Departments or agencies	Requests			
	without grievance	with grievance	pending	Total
Department				
Cultural Affairs	4	3	1	8
Municipal Affairs	1	2	4	7
Agriculture, Fisheries and Food	12	4	11	27
Supplies and Services	1	0	0	1
Cultural Communities and Immigration	5	1	5	11
Communications	1	2	0	3
Treasury Board	0	0	2	2
Education	20	2	7	29
Energy and Resources	9	5	9	23
Higher Education and Science	281	119	89	489
Environment	20	9	24	53
Finance	3	0	0	3
Industry, Commerce and Technology	2	0	1	3
Justice	124	43	27	194
Recreation, Fish and Game	16	5	19	40
Manpower, Income Security and Occupational Training	885	191	513	1 589
Revenue	216	119	123	458
Health and Social Services	4	4	7	15
Public Security	492	235	524	1 251
Transport	28	14	39	81
Labour	3	1	2	6
Offices				
Coroner	2	6	3	11
Real estate assessment	3	1	1	5
Commissions				
Access to Information	1	1	0	2
Administration of Retirement and Insurance Plans	31	5	51	87
Social Affairs	45	26	25	96
Appeal in the matter of occupational injuries	10	28	6	44
Racecourses	0	0	2	2
Public Service	5	1	2	8
Labour Standards	17	6	16	39
Police	2	1	0	3

Table 7 (continued)

Departments and agencies involved in interventions by the Ombudsman in 1989-90

Departments or agencies	Requests			
	without grievance	with grievance	pending	Total
(Commissions)				
Agricultural Land Preservation	6	0	1	7
Quebec Parole Board	6	0	4	10
Occupational Health and Safety	628	304	395	1 327
Transport	1	0	0	1
Securities	3	0	7	10
Institutions				
Judicial Council	0	0	1	1
Public Curatorship	35	17	47	99
Inspector General of Financial Institutions	0	1	2	3
Auditor General	0	0	1	1
Offices				
Agricultural Credit	3	0	2	5
French language	0	1	0	1
Handicapped Persons	37	10	16	58
Quebec Professions	0	1	0	1
Consumer Protection	5	0	6	11
Child Care Services	2	1	2	5
Boards				
Agricultural Insurance	0	0	1	1
Automobile Insurance	526	160	135	821
Health Insurance	52	17	9	78
Cinema	1	0	0	1
Building contractors	7	0	2	9
Quebec rental board	38	17	9	64
Lotteries and races	1	0	0	1
Agricultural Markets	0	0	1	1
Pension Board	192	33	63	288
Telecommunications	0	0	2	2
Crown Corporations				
Industrial Development	1	0	1	2
Quebec Housing	34	11	16	61
Courts				
Appeal in the matter of agricultural land preservation	2	0	0	2
Labour	1	0	0	1
Other	0	0	7	7
Total	3 819	1 407	2 243	7 469

APPENDIX 5

Extract from the 1980 annual report of the Public Protector, Luce Patenaude, Table 4-C, p. 265-267. (free translation) Report is available in French only.

TABLEAU 4-C

DEMANDES D'ENQUÊTE ACCEPTÉES, RÉPARTIES SELON LE SERVICE IMPLIQUÉ, LA DÉCISION PRISE ET LE RÉSULTAT OBTENU

Décision prise	plainte non fondée		plainte fondée[1]			encore à l'étude	TOTAL
	correction		correction				
Résultat	non nécessaire	obtenue[2]	impossible	obtenue	non obtenue		
Service impliqué							
MINISTÈRE:							
affaires culturelles	4			5		1	10
affaires intergouvemementales	2	1		2		1	6
affaires municipales	4			1		1	6
affaires sociales	304	26	2	99		10	441
agriculture, pêcheries et alimentation	18	1	9	8		3	39
assemblée nationale	1						1
directeur général des élections	1			3			4
communautés culturelles et immigration	7			1			8
communications	1						1
conseil exécutif			1	1			2
éducation	115		1	16		1	133
énergie et ressources	33		5	18			56
environnement	23		10	4		1	38
finances	2						2
curatelle publique	11		1	4			16
fonction publique	3		3			1	7
industrie commerce et tourisme	2		2	2			6
institutions financières et coopératives	14		1	2			17
justice (sûreté)	93	4	5	24		3	129
loisir, chasse et pêche	35	—	2	4	3[3]		44
revenu	252	71	13	199	3[3]	6	544
transports	201		15	80		3	299
travail et main-d'oeuvre	36		8	8	1[3]	1	54
travaux publics et approvisionnement	11			5			16

Notes 1, 2, 3: voir les explications en bas du tableau.

TABLEAU 4-C (suite)

DEMANDES D'ENQUÊTE ACCEPTÉES, RÉPARTIES SELON LE SERVICE IMPLIQUÉ, LA DÉCISION PRISE ET LE RÉSULTAT OBTENU

Décision prise	plainte non fondée		plainte fondée[1]			encore à l'étude	TOTAL
	correction		correction				
Résultat	non nécessaire	obtenue[2]	impossible	obtenue	non obtenue		
BUREAU:							
Révision de l'évaluation foncière	1		1				2
COMMISSION:							
adm. du régime d'assurance stabilisation des rev. agricoles	1				1[3]		2
adm. du régime de retraite	32		7	5		9	53
affaires sociales	12	2	11	12			37
appel sur la langue d'enseignement	1						1
contrôle des permis d'alcool	5						5
fonction publique	1					1	2
libérations conditionnelles	3						3
municipale du Québec	2		1				3
normes du travail	4		2	1			7
police	5						5
protection du territoire agricole	6	1	2	1		2	12
santé et sécurité du travail	326	1	30	294		19	670
surveillance et d'enquête de la langue française				1			1
transports	3		2			1	6
valeurs mobilières				1			1
OFFICE:							
crédit agricole	4			1			5
langue française	1			1			2
personnes handicapées	1						1
planification et de développement	1						1
professions	4						4
recrutement et sélection du personnel	63		2	10	1	5	81

Note 1, 2, 3, voir les explications en bas du tableau.

TABLEAU 4-C (suite)

DEMANDES D'ENQUÊTE ACCEPTÉES, RÉPARTIES SELON LE SERVICE IMPLIQUÉ, LA DÉCISION PRISE ET LE RÉSULTAT OBTENU

Décision prise	plainte non fondée		plainte fondée[1]			encore à l'étude	TOTAL
	correction		correction				
Résultat	non nécessaire	obtenue[2]	impossible	obtenue	non obtenue		
RÉGIE:							
assurance-automobile	145	[illegible]	3	116		2	299
assurances-agricoles							1
assurance-maladie	20	[illegible]		10		1	44
assurance-dépôt	6						6
entreprises de construction	4			3			7
logement	43		9	14		1	67
loteries et courses	3			2			5
rentes du Québec	64	11		12			87
SOCIÉTÉ:							
habitation du Québec	4		3				7
développement industriel			1				1
TRIBUNAL:							
expropriation	1						1
Total	1 940	164	152	970	9	73	3 308

[1] Plainte fondée: demande qui après enquête permet de contester un acte administratif ou son omission.

[2] Plainte non fondée: correction obtenue: demande qui après enquête ne permet pas de contester l'acte administratif posé par un fonctionnaire ou son omission, mais donne malgré tout lieu à une correction suite à la présentation de faits nouveaux.

[3] En attente d'une réponse du Service impliqué.